United States Court of Appeals for the Second Circuit



APPENDIX

76-1307



In The

United States Court of Appeals

For The Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VS.

BERNARD L. GOLDENBERG,

Defendant-Appellant.

On Appeal from a Judgment of the United States District Court for the Southern District of New York.

APPENDIX

Volume III, pp. 557a-End

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1	1h ja 27		Goldenh	erg - cro	ss
2	A	Not many	times.	That's n	ot my business.
3	My business	is acqui	sitions	and merge	rs.
4	Q	You have	seen co	onfirmatio	ns?
5	A	Occasion	ally, ar	nd I have	bought stock from time
6	to time, bu	t not as	much as	probably	in my business I
7	probably wo	uld versu	s somebo	ody who is	not in my business.
8	Q	You deal	t with h	canks and	you have kept records
9	and contrac	ts in you	r busine	es that	ou have been involved
10	in?				
11	A	Yes, sur	e.		
12	Ω	You know	about o	debentures	s, right?
13	A	I know w	hat the	y are, yes	
14	O	You know	about	notes?	
15	A	Promisso	ry note	s?	
16	Q	Yes.			
17	A	Yes.			
18	Q	None of	those y	ou insist	ed upon in return for
19	turning ove	er over \$	400,000	in cash;	is that right?
20	A	It wasn	't that		
21	Q	Yes or	no?		
22	A	No.			
23	Q	Did you	ever ge	t money b	ack?
24	A	This mo	ney?		
25	Q	Yes.			

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1	lh ja	28	184 Goldenberg - cross 552
	2)u		
2		A	No.
3		Ü	What happened to it?
4		A	It was given to Mr. Kimis.
5		Ü	Did you ever ask him what happened to the
6	money	?	
7		A	Of course.
8		Q	And what did he say?
9		Α	Numerous things at different times.
10		Q	Specifically?
11		A	There is no one specific thing. He had several
12	diffe	rent	
13		Q	What was the money to be for?
14		Α	For the original reasons I gave you.
15		Q	Which were?
16		Α	Building a hotel and paying to get a gambling
17	licer	se in	n Las Vegas, and the location was across from
18	the 7	ropi	cana Hotel.
19		Q	Did you ever ask him whether the hotel was
20	to be	bui!	lt?
21		A	From time to time I asked him many questions.
22		Q	Leeds in March of 1968 was a lawyer for
23	Super	rior 1	Plans; is that right? He was the secretary?
24		A	Yes.
95		0	You paid him \$1,000 a month retainer?

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1h ja 29 Goldenberg - cross

A I don't recall. That sounds right. I don't know if it was every month.

- Q To do legal work for you?
- A For Superior Plans or me?
- Q Was this retainer just from Superior Plans?
- A I believe so. I'm not sure. I believe so.
- Q You saw the uperior Plans checks, and there is \$600 drawn out to him.
 - A When did I see the Superior Plans checks?
- Q It was introduced in evidence, the charge was introduced in evidence. Your lawyer stipulated it is accurate. There are \$600 of Superior Plans checks payable to Mr. Leeds.

Is it your testimony that his \$1,000 a month retainer was only paid once in the amount of \$600?

A No. I said I didn't know if the \$1,000 was paid every month and for how many months --

Q Mr. Leeds was also your own personal lawyer, was he not, and you paid him personally?

A From time to time he did work for me; Mr.

Leeds, yes. I had other lawyers who did work for me too occasionally.

- Q He was available to do work for Superior Plans?
- A He was available to do work for anyone who

	186 554
1	lh ja 30 Goldenberg - cross
2	wanted to hire him.
3	Q He was fairly meticulous in drawing up the
4	articles of incorporation, having the certificate of
5	incorporation filed
6	MR. BERGER: Objection.
7	THE COURT: Sustained.
8	Q He did these things? He did file the articles
9	of incorporation, he did prepare the resolution for the
10	bank, did he not?
11	A I would say by the minutes and his name on all
12	this, it was quite evident he did.
13	Q He was available at this time in March to you?
14	A In March? I don't know.
15	Q March 8, 1968 when these bank records were
16	filed and the corporation was filed, he was available
17	to do legal work for you?
18	A A lot of lawyers sometimes go away for three
19	weeks for a client. Yes, I would say that he was
20	available eventually, if you wanted to talk to him. You
21	could get ahold of him sometimes, but a lot of times not

Did you ever see him draw up a contract?

In all truthfulness, I'm not sure.

MR. BERGER: Objection.

a specific day, if you wanted him.

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1	1h ja 31 Goldenberg - cross 555
2	THE COURT: Sustained.
3	O Did you ever discuss with him whether he knew
4	how to draw up a contract?
5	A That's ridiculous.
6	MR. BERGER: Objection.
7	THE COURT: Sustained. It will be stricken,
8	and the jury will disregard it.
9	Q Did you ask him to draw up a contract for this
10	Superior Plans money, the over \$400,000 you turned over to
11	Kimis?
12	A I don't believe so.
13	Q You said the money was for a hotel and a gambling
14	license for the hotel, right?
15	A That's what I stated.
16	Q Did there come a time when you learned that the
17	hotel wasn't going to be built?
18	A There came a time it became evident, yes.
19	Q How long was that after you turned the money
20	over in 1968?
21	A I can only give you an educated guess. Would you
22	like me to give you my best opinion?
23	Q Your best opinion.
24	A I would say not until quite a little while after
25	Mr. Kimis got all this money.

going to get points, which is the same thing as a percent,

lh ja 33

Goldenberg - cross

in the hotel, not in the gambling, because you have to be licensed to hold an interest in the gambling.

of bringing in banquets and different junkets, which is is called, groups of people that would so so that they would be able to go a little cheaper, you might say, and I also was going to bring in acquisitions and mergers and have meetings there, because a lot of corporations have different affairs in Las Vegas now for many reasons that they think are practical.

Mr. Kimis, for arranging for building the hotel—
there was a Mr. Minskoff, I knew there was one other.

Minskoff would participate in the equity for arranging for the mortgages and everything, and the construction of the hotel with the Heers Roter people who were builders in Las Vegas.

Let's see if I covered everybody. Mr. Kimis was going to have a percent in the hotel, too.

- Q But it was not decided, you said, that you were going to get points?
 - A Points is an equity. The same thing.
 - Q How many points? What percentage?
- A It was based upon the official amount of money, the whole total that would have been put into the

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A After all the money was put into the thing, some five hundred some-odd thousand dollars.

From the time of your first --

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Goldenberg - cross

Q How much had you put into the hotel and how much into the gambling and how much had you given to this lawyer to --

A We were not putting money into the hotel. I mean, we never had that kind of money. We were putting money for the gambling license and also putting the money into the amusement corporation, which I told you had this motel ownership by Kimis for the purpose of buttressing up sufficient net worth of more liquidity than just assets in the form of real estate so that we wouldn't have to come up with all the money initially when we had those two different deals we were talking about, buying the Hacienda whereby we would put up some more gambling money, or building the complex.

When that fell through, and then Kimis said, "Well, we might be able to do it if we go through M&G or M&S Amusement Company," and I explained to you what I meant by that.

Where was this motel?

I believe it was in California, near the famous racetrack. That's why it was such a good mctel. It was always crowded.

You didn't invest money for the motel? was for the license for this M&G? Right?

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1	1h ja 37 Goldenberg - cross
2	THE WITNESS: Your Honor, I might not be able
3	to get back by two o'clock.
4	THE COURT: Mr. Goldenberg has indicated to
5	me that he can't be back here by two o'clock.
6	THE WITNESS: I think I can, but I'm not
7	sure.
8	THE COURT: You be sure. I am telling you to
9	be here at two o'clock.
10	THE WITNESS: Can I tell you why?
11	THE COURT: Talk to Mr. Berger and let Mr.
12	Berger tell me.
13	(Pause)
14	THE COURT: How much do you have in the way
15	of rebuttal?
16	MR. LITTLEFIELD: I've got probably three or
17	four witnesses, your Honor.
18	THE COURT: How long will they be?
19	MR. LITTLEFIELD: I think ten minutes, ten
20	minutes, ten minutes. Probably do it in an hour.
21	THE COURT: All right. How much is the

MR. BERGER: I may not.

redirect going to be?

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MR. LITTLEFIELD: May I ask, are there other witnesses that Mr. Berger has?

Goldenberg - cross

MR. BERGER: No.

THE COURT: You better have your witnesses

here. During the lunch hour maybe you can condense what

you are going to continue with here to just a few minutes.

The other thing on the charge, the question of false exculpatory statements. That is an issue here, I believe.

MR. LITTLEFIELD: On the question of wilfulness
I may have a couple of extra thoughts in view of what has
developed.

THE COURT: All right.

(Luncheon recess)

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AFTERNOON SESSION

2:00 p.m.

(In the robing room.)

THE COURT: Yes, Mr. Berger? YOu wanted to see us in the absence of your client?

MR. BERGER: My client is here now.

THE COURT: Do you want him here?

MR. BERGER: Yes, I just as soon have him here.

THE COURT: I understood that you didn't.

Then we can do it in open court.

MR. BERGER: We might as well do it here.

(The defendant entered the robing room.)

MR. BERGER: Your Honor, the situation is this. The receipts that were put in evidence with regard to moneys paid to Mr. Eriss, Mr. Kimis, were only a part of the receipts. The balance of the receipts, 13 receipts, were in the possession of the government and are still in the possession of the government. We have not had it given to us as part of our 3500 material nor have I discovered until today, after finally getting through to Washington, D.C., that it is in the hands of the government. It is in the hands of Mr. William Hyatt, Criminal Tax Division, Justice Department, and it has been in his possession since April 8, 1974, for the purpose of doing a forensic study to determine

whether the handwriting on them was a forgery.

THE COURT: Do you know anything about that,

Mr. Littlefield?

MR. LITTLEFIELD: I don't know anything about that, your Honor. I know at some point there was something about handwriting, but I don't know more than that.

THE COURT: I guess you will have to check that out.

MR. LITTLEFIELD I will ask the agents now, your Honor.

THE COURT: Bring him in here.

MR. LITTLEFIELD: All I know is that there was something about handwriting which was of no use to anything. It didn't -- as I understand it, and I am not certain, there was some request made for handwriting and the result was -- there was no result of any consequence.

(Mr. Digricoli entered the robing room.)

MR. LITTLEFIELD: What is it, Mr. Berger mentioned something about handwriting analysis and the IRS in Washington?

THE COURT: He says there are 13 receipts in Washington.

MR. DIGRICOLI: I wasn't at the Washington conference, your Honor, but there was some talk about some handwriting in Washington. I don't know any more than that.

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THE COURT: You don't know what the papers consisted of?

MR. DIGRICOLI: No, I had nothing to do with that conference in Washington.

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MR. LITTLEFIELD: I'd be glad to go look at the report, which I have, of that conference date, Mr. Berger. Have you got a date of when that conference was?

MR. BERGER: This is a copy of a letter written by Mr. Goldenberg to Mr. White in response to what he was told to do in that conference, and I am trying to see if it states in there.

MR. LITTLEFIELD: Are these receipts supposed to be additional or copies of the same ones?

MR. BERGER: They are additional receipts. The letter so states. They are different than the receipts in evidence.

(Pause.)

MF. LITTLEFIELD: Your Honor, I don't know. I will have to call Mr. White. I just don't know and I have never seen or heard anything about this.

THE COURT: I don't know that there is such that we can do with a continuation of the examination of this witness in the event there are such receipts.

MR. LITTLEFIELD: There are copies here at-

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tached to the letter, which Mr. Berger has had in his possession all throughout this trial. I would have thought that if he had known of this he would have -- we wouldn't have objected to the copies. Certainly we could have looked for such things.

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MR. BERGER: I didn't realize until last night that the receipts that I had were not all of the receipts. Then when looking through certain documents, I found out about the receipts that were given to the government in March, and then I contacted the government and was told it was in the hands of the Justice Department.

MR. LITTLEFIELD: You have contacted the government about these?

MR. BERGER: Yes.

MR. LITTLEFIELD: When?

MR. BERGER: Today.

MR. LITTLEFIELD: You didn't tell me.

MR. BERGER: I just contacted them. Mr. White. Mr. White told me that some time after April 8th they were turned over to Mr. William Hyatt of the Criminal Tax Division, Justice Department.

MR. LITTLEFIELD: Do you know anything about that?

MR. DIGRICOLI: No.

MR. LITTLEFIELD: I will have to call Mr. Hyatt,

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2 your Honor.

THE COURT: What do you propose to do if they are --

MR. LITTLEFIELD: If there are more receipts?
THE COURT: Yes.

MR. LITTLEFIELD: Mr. Berger and Mr. Goldenberg has had a copy of this letter with a copy of the receipts all along.

MR. BERGEN: Your Honor, lost receipts and proving they are lost is one thing. These are in the possession of the government

had them in your file. You should have asked the government for them. I don't think there is any question about that. There is nothing on the government's part about this.

As a matter of fact, you could have asked Mr. Littlefield beforehand if there was claimed to be receipts for these cash transactions. The only thing is, how do we go about the examination of this witness with respect to these?

I think that is all that is involved, really.

MR. BERGER: Also, your Honor, I'd like the report from the government.

MR. LITTLEFIELD: As to handwriting made on these, is that right?

MR. BERGER: That is right.

MR. LITTLEFIELD: If there was such.

Do you know whether there was?

MR. BERGER: I don't know. Tha's the purpose of the request. The report must have come back as either positive, negative or somewhere in between.

THE COURT: What do you suggest?

MR. LITTLEFIELD: Your Honor, I think we should continue with the examination. I will make inquiry -- continue with the trial as it is presently doing. At the end of the day I will make -- I will send one of the agents now to make inquiry, and we will do the best we can do to resolve it. If there is anything that can be done -- proceed with the case. If we have to call Mr. Goldenberg back on Monday for any particular reason, the government will have no objection to doing that. I think in view of the fact that Mr. Goldenberg wrote this letter in March of 1974 to somebody in the IRS in Washington, and he has had a copy of this letter with the receipts attached, that he knew about it, if anybody knew about it.

MR. BERGER: Your Honor, there will be other originals that have been in the hands of the government -
THE COURT: But this is something that he submitted to the government.

MR. BERGER: At their request.

THE COURT: All right, at their request, but he knew he had these receipts. When he was on direct examination he certainly could have referred to them then. There is no reason at all he couldn't have said "I have other receipts that I submitted to the government and they didn't return them to me."

I don't know why, the fact that the originals are in the -- no, I don't see anything at all in that.

I can't see that the government has done anything wrong here. As a matter of fact, I think it was your obligation and that of your client, having this information in his possession, to have brought it out on your direct examination.

MR. BERGER: Then I will offer them in evidence. I will offer the copies and the letter. If the government will stipulate to it. It is not a lost document.

MR. LITTLEFIELD: He has to check it out.

On Monday we can continue with the matter of this. I suggest we go ahead with the trial as planned in all other respects.

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(In open court; jury present.)

3 THE COURT: All right, proceed.

MR. LITTLEFIELD: May I approach the bench?

THE COURT: Yes.

MR. LITTLEFIELD: Would you ask the jury to step outside for one minutes, or we could go into the robing room.

THE COURT: Would the jury file out for just a moment or two.

This is very disruptive to a jury to do something like this, really.

MR. LITTLEFIELD: Your Honor, I have a question -THE COURT: It is almost an hour and 45 minutes
since you have had a chance to frame this question. You
told me before when we had adjourned you had two areas to go
into. We have been out to lunch for an hour and 45 minutes
and we bring in the jury and then you ask to have file
out.

MR. LITTLEFIELD: I realized as I was about to ask the question that I should advise the Court first that when Mr. Goldenberg was arrested in California in January he had certain papers on him which indicated that he had used separate names during the course of the period while he was in flight or a fugitive after having these

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advised of these charges and I didn't want to surprise the Court with that question.

of consciousness of guilt and knowledge, your Honor. I wanted to give Mr. Berger a chance to object, if he was going to do so, outside the presence of the jury.

MR. BERGER: Your Honor, I object unless the government would properly offer the evidence it has that these names were not used prior to the time that there was an indictment.

THE COURT: Or subsequent to the time that he was advised?

MR. BERGER: That is right, your Monor. If the names were used prior to the time of his knowledge of an indictment they are certainly not probative of the fact that if he continued to use these names that is it was an element in flight.

THE COURT: I wouldn't think so either,
Mr. Littlefield, would you?

MR. LITTLEFIELD: I would, your Honor. It is probative if you are using false names that you consciousness of guilt, that you are aware that you are avoiding being apprehended in connection with matters of this kind.

THE COURT: You have to give me more than just

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2 that.

MR. LITTLEFIELD: Whether he was arrested in January of '76 is whether these documents were in his possession.

THE COURT: The indictment was in --

MR. LITTLEFIELD: The telegram and the conversation with me were in April of 1975.

THE COURT: I suppose you can't --

MR. BERGER: May it please the Court, if
these documents were in existence and were being used prior
to the date of the indictment and prior to the time Mr.
Goldenberg knew of the indictment, the fact that he had them on
him is probative of nothing.

I suppose, in the first instance, the government can introduce it and it is up to them to show -- it is up to the defendant to show they had not been used at the time.

I would think there is no burden upon the defendant to come forward with testimony, but I think it is probably admissible.

MR. BERGER: It is admissible if the government shows actual use of these different names since the date of this indictment.

THE COURT: What does the proof consist of?

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MR. LITTLEFIELD: I have four clips of paper, the first is Bernard Cohen, with a date of December 5th. The next one is B. Friedman, and the date on that is October 22, 1975.

The next is Bernard Simmons, dated November 12, 1975.

The next is a blank check, Bernard L. Moran, and we also have Leon Goldenberg.

THE COURT: I suppose you have the right to ask him if subsequent -- dont' you say anything, Mr. Goldenberg.

I suppose you have the right to ask did he ever travel under these names subsequent to so and so and confront him with it. I think you have that right.

MR. LITTLEFIELD: All right, your Honor.

THE COURT: I think that's the way you can do

it.

All right, bring the jury in.
(Jury present.)

THE COURT: I am sorry to have to do that to you, but there was a question that had to be discussed in your absence. Unfortunately, it wasn't thought of until you were already in the room.

Proceed.

-	206 580a
1	12 rmbr Goldenberg-cross 574
2	BERNARD L. GOLDENBERG, resumed.
3	CROSS EXAMINATION (Continued)
4	BY MR. LITTLEFIELD:
5	Q Do you know Bernard Morann? M-o-r-a-n-n.
6	A Yes.
7	Q Do You know Bernard Cohen?
8	A Yes.
9	Q Do you know Bernard Simmons?
10	A Yes.
11	Q Do you know Bernard B. Friedman?
12	A B. Friedman is a woman.
13	Q Bernard Cohen, Bernard Morann and Bernard
14	Friedman, referring to those three names, are those names
15	you used in California for yourself at any time during the
16	period of April 1975 to January 1976?
17	A Can we take them in order?
18	Q Yes or no?
19	THE COURT: Did you use any of them, first of
20	all, between that period of time?
21	THE WITNESS: Let me eliminate them so I can

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Who is Bernard L. Morann?

think of them. B. Morann, no.

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A Me.

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Q I thought you were Bernard Goldenberg?

	20	7 581a		
1	13 rmbr	Goldenberg-	cross	575
2	A	That is correct.		
3		THE COURT: The que	stion is, did you	u ever use the
4	name of Ber	nard L. Morann during	that period of	time?
5	A	No.		
6	Q	You had with you on	January 10, 1976	, a check bear
7	ing the nam	e at the top Bernard	L. Moran?	
8	A	That is correct.		
9	Q	Blank check?		
10	A	That is correct.		
11	Q	You didn't use that o	heck during that	period?
12	A	No, I did not.		
13	Q	Did you have an acco	unt during that	period
14	at some ban	k in the name of Bern	ard L. Moran?	
15	A	No.		
16	Q	Bernard Simmons, did	you use that na	me during the
17	period in o	uestion?		
18	A	I believe so.		
19	Q	In fact		
20		MR.LITTLEFIELD:	Please mark this	
21	Government'	s Exhibit 49.		
22		(Government's Exhibit	t 49 was marked	for
23	ident	ification.)		<i>p</i> .
24	Q	I show you Governmen	t's Exhibit 49 f	or

identification and ask if you recognize the signature

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li	126)원 582 a	
1	14 rmbr	Goldenberg-cross	576
2	Bernard Sim	mons at the bottom of that document.	
3	A	Yes.	
4	Q	Is that your signature?	
5	A	It appears to be.	
6	Q	That is some sort of a rental contract?	
7	Α	Yes, for my associate, Miss Simmons.	
8	Q	Bernard Cohen, is that another name you	nsed
9		period of time?	
10	A	Yes.	
11	•		
12		(Government's Exhibit 50 was marked for	
13	ldent	ification.)	
14	Q	I ask you if that receipt was in your p	ossession
	when you we:	re arrested and if that is Bernard Cohen	?
15	A	This is a receipt. I don't recall nec	essarily
16	seeing.		
17		THE COURT: You testified you used the	name
18	Cohen.		
19		THE WITNESS: Yes, but this receipt I do	n't
20	recognize.		
21		THE COURT: You did use the name Bernard	d Cohen
22	during that	period of time?	
23	accord char	THE WITNESS: Yes, very limited.	
24			
	Q	Bernard L. Morann?	

No.

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Goldenberg-cross

(Government's Exhibit 51 was marked for identification.)

Q I show you the Xerox paper there, Government's Exhibit 51. Do you know what that is?

A Yes.

Q What is it?

A It is a bank account that was formed, oh, for several months in Hawaii.

Q In what year?

A My secretary, Deloros Morann formed this bank account.

Q Unde the name Bernard L. Morann?

A Yes. I wasn't in the bank, or anything. No, she formed it under her name with my right to deposit checks as well as to issue checks for her and she got the permission, apparently, and I was informed about it and I wrote about one check for about a hundred dollars on this account, and that is all.

THE COURT: Using the name Bernard L. Morann?

THE WITNESS: That's right, with the signature

card I signed. That is wny they issued the money, the

hundred dollars. It was a limited transaction for that -
MR. LITTLEFIELD: The government offers 49, 50

and 51.

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	9	10 5848
1	16 rmbr	Goldenberg-cross 578
2		THE COURT: Any objection?
3		THE WITNESS: She was a business associate.
4		MR. BERGER: I object, your Honor.
5		THE COURT: Overruled.
6		(Government's Exhibits 19, 50 and 51 were received
7	in ev	idence.)
8	Q	These were in your possession when you were
9	arrested in	California, is that correct?
10	A	To the best of my knowledge, yes, in my suitcase.
11		MR. LITTLEFIELD: May I hadn these to the jury,
12	your Honor?	
13		THE COURT: Yes, you ma,.
14		(Pause.)
15		MR. LITTLEFIELD: This is the final area of
16	ross exami	nation, your Honor.
17	Q	Referring to this chart you say that the 251,000
18	cashed thro	ugh
19		THE COURT: What is the exhibit number?
20		MR. LITTLEFIELD: 29 in evidence, your Honor.
21	Q	You say that the \$251,000 was cashed by the check
22	casher, Mr.	Lazarus, and then was turned over to Kimis?
23	A	Yes.
24	Q	Additionally, directly cashed by you, a total
25	of 130,000.	Were those directly cashed checks also turned

A Mr. Gold and Mr. Moen state they know Mr. Kimis for 15, 20 years, they don't know me and they cashed checks for him made out to Bernard Goldenberg.

23

24

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Goldenberg-cross

Q Your contention is these checks, if

my recollection is correct, were endorsed by you at the

top? They were made out to you and endorsed by you and under
endorsed by Gold or Moen? Is it your testimony you gave

those checks to Mr. Kimis?

A To the best of my knowledge, I gave checks to

Mr.Kimis when I didn't give him cash. He preferred cash,

but sometimes either the check casher or the bank didn't have

the cash and I had to give him official bank checks.

Q So at least on the M&G situation and in these two cases (indicating) you gave him checks?

A To the best of my knowledge, I don't know if that was the incident, but I do recall that I do occasionally give him official checks, and it seems to be because I didn't know --

- Q M&G you have said --
 - A That is correct.
 - 0 What about Gold and Moen?

A Not until I saw that report did I have any idea what he did with the checks.

Q Did you give him those checks?

A I might have given it to Mr. -- what is his name -- Eriss, who gave it to Mr. Kimis but he was the ultimate receive of the checks, I guess.

ation stock for you in your name? You have seen that

G.

	1.1 1 2
1	20 rmbr Goldenberg-cross 582
2	exhibit?
3	A No. I heard it talked about in the court.
4	The item is Allograph.
5	Q A-1-1-g-r-a-p-h?
6	A And that woman from ECM
7	Q Goldstein.
8	A The brokerage firm were the ones who did Allo-
9	graph and that is the one tied in with ECM. That is
10	another case in point.
11	Q Payments to various individuals. We have seen
12	checks to three other individuals, William Eriss. Were you
13	paying Mr. Kimis' chauffeur?
14	A No, what happened
15	Q Yes or no.
16	A I was not paying Mr. Kimis' chauffeur
17	Q You were giving checks to Mr. Eriss, made out to
18	him, for 200 or \$250 a week?
19	A That is right. He worked for me limited,
20	only because Mr. Kimis went out of town and he asked me if
21	I could give him work and I did.
22	Q You used this money to pay for Guido Benigno's
23	salary, your chauffeur?
24	A He was not my cahuffeur. He was an assistant
25	to me and did numerous things.

		7.1 2.1.1	
1	21 rmbr	Goldenberg-cross	583
2	Q	Did he drive you?	
3	A	Yes. I drove myself too but that	doesn't make
4	me a chauff	eur.	
5	Q	Have you seen Mr. Benigno or talked	to him re-
6	cently?		
7	Α -	No.	
8	Q	Have you talked to him?	
9	A	Yes.	
10	Q	How recently?	
11	A	Don't holdme to the exact minute, bu	it I would say
12	within thre	e days.	
13	Q	What does Mr. Banigno do now?	-
14	A	I didn't ask him. I just asked him	n how his child-
15	ren were an	d how he was and	
16		MR. BERGER: Objection, your Henor.	
17	Q	Do you know whether he works for Mr.	Berger?
18		MR. BERGER: Objection.	
19	A	No, I don't know that.	
20		THE COURT: I will permit it.	
21	Q	Did he not when you were released fr	rom jail
22	here in New	York, after you had been brought her	re from
23	California	didn't you tell the prison author:	lties to
24	have your c	lothes mailed to Mr. Benigno because	that was
25	arranged th	rough Mr. Berger so that you would be	able to

1			
1.	22 rmbr	Goldenberg-cross	
2	get your cl	othes back?	2'
3	A	No.	
4		MR. BERGER: Objection.	
5		THE COURT: I will permit it.	
6	Q	Were your clothes mailed from the prison t	0
7	Mr. Benigno	?	
8		MR. BERGER: Objection.	
9	A	No.	
10	Q	Did Mr. Benigno come and get your clothes?	
11		MR. BERGER: Objection.	
1.7		THE COURT: Just answer yes or no.	
13	A	No.	
14	Q	Did he have anything to do with obtaining	your
15	clothes fro	om the prison?	
16	A	No.	
17		MR. BERGER: Objection.	
18		THE COURT: Overruled.	
19	A	None whatsoever.	
20	Q	Or any of your property?	
21	A	None whatsoever. It went to the office	
22	of Mr. Rich	nard Zeif at 230 Park Avenue.	
23	Q	Did Mr. Be gno pick it up there?	
24	A	No, they gave it to me personally, my stu-	ff.
25		THE COURT: I wish you would just answer	

	217 591a
1	23 rmbr Goldenberg-cross 585
2	yes or no.
3	MR. BERGER: Objection.
4	THE COURT: Overruled.
5	Q It is a fact that you know Mr. Benigno does
6	for Mr. Berger as an investigator of some sort?
7	MR. BERGER: Objection.
8	THE COURT: Overruled. If you want the basis of
9	it, you can step up here and'I will tell you.
10	(At the side bar.)
11	THE COURT: If this is directed to the purpose
12	of proving Mr. Benigno is under the control of either one
13	of you, and that is the reason
14	MR. BERGER: He is asking questions about
15	my control.
16	THE COURT: The witness said no and you can't
17	infer anything from a "no" answer.
18	MR. BERGER: Your Honor, I feel there is no
19	basis
20	THE COURT: I think there is a basis, if he is
21	trying to show control.
22	MR. BERGER: There is no basis in fact
23	as far as the questions go with regard to me.
24	(In open court.)

	1.10	592a	
1	24 rmbr	Gcldenberg-cross	586
2	BY MR.LITTLEFIE	ELD:	
3	Q Do	you know whether Mr. Benigno at pr	esent, in the
4	past months, ha	as been associated in any respect d	loing any work
5	for Morton Berg	ger?	
6	A No	I don't whatsoever.	
7	A You	have no knowledge of that?	
8	A No.	I don't.	
9	Q Whe	ere was Mr. Benigno when you spoke	to him
10	two or three da	ays ago?	
11	A At	his home.	
12	Q Whe	ere were you?	
13	A I	was at the hotel where I am staying	and I called
14	him from the ho	otel across the street because the	phone booth
15	didn't work in	the hotel I was at at the time and	I believe
16	I called him ea	arly in the morning, your Honor.	
17	тні	COURT: Yes.	
18	(Pa	ause.)	
19	Q Hor	w did you get Mr. Benigno's number:	•
20	A I	really can't recollect. I believe	my associ-
21	ate gave it to	me, Miss Simmons.	
22	Q Who	ere did she get it, do you know?	Did she
23	tell you?		
24	AI	don't recall asking her. Even thou	igh I might
25	have had it my	self, I don't know. I have hundred	is of numbers

	593a .
1	25 rmbr Goldenberg-cross 587
2	of associates and people I have done business with. When
3	I originally called him, I spoke to his wife, he was not
4	home.
5	Q Did Miss Simmonsknow Mr. Benigno from before?
6	A No well, she had spoke to him from California,
7	I believe, when I had spoken to Mr. Benigno I think once from
8	California.
9	Q Your testimony is that Mr. Benigno had nothing
10	to do with possessions of yours which were at the jail which
11	were returned to you and he was not involved in any respect
12	in that process?
13	A You have this all wrong and
14	THE COURT: The answer is no, is that correct?
15	THE WITNESS: Your Honor, please
16	THE COURT: No, no, no. The question can be
17	answered yes or no and that is all that is required.
18	THE WITNESS: But
19	THE COURT: The question can be answered yes
20	or no or I don't know.
21	THE WITNESS: I will take the Fifth Amend-
22	ment.
23	MR. BERGER: May the question be asked again.
24	THE COURT: Yes.

MR.LITTLEFIELD: I would ask him to explain,

Goldenberg from

-	. 588
1	26 rmbr Goldenberg-cross
2	your Honor, in what way Mr. Benigno was involved, if he
3	was.
4	THE COURT: If there is no objection, I will
5	permit it.
6	A Now you will understand and I won't get myself
7	in trouble.
8	When I was in California I was picked up
9	almost like in a bathing suit
0	Q I want from the time you left
1	THE COURT: You listen to the question and you
2	answer the question as best you can. What is the question?
3	Q From the time that you were in New York and left
4	the jail did Mr. Benigno have anything to do with your
5	possessions being returned or obtained by Mr. Goldenberg fro
6	the jail?
7	A No.
8	Q Explain what you were going to start to explain
9	about Mr. Benigno and your possessions, if any?
0	A When I was in California I was picked up
1	titerally like in a bathing suit, incarcerated and shipped
2	to the Los Angeles jail where I stood up for two days and
3	nights and didn't eat. Then I was brought to New York

in two degree weather and my teeth should still be chat-

tering. I spoke to my secretary in California and asked

Goldenberg-cross

her to please send me clothes which I understood would be delivered to the jail, because I was going back and forth to your office and I had to have something to wear.

Consequently she put it in a box and said

"Did that cost money." For \$12 she sent me an overcoat,

underwear, pair of shoes, a suit and I asked her to please
send to Mr. Benigno's house and she did. Mr. Benigno
received that clothing and Mr. Benigno said to me

"Should I bring it down to the jail?"

After I saw that they even lost my clothes the first day they wanted me to come to your office I said this was ridiculous and better not have anything brought to the jail because I wouldn't get a clothes when I get discharged and I said "No, you just keep it there."

He said "Who is your lawyer?"

I said "Mr. Berger. You know Mr. Berger."

He said "Yes, I will try to give it to Mr.

Berger."

When I went to Mr. Berger's house to go over my testimony, and everything else, Mr. Berger even did me a big favor. All my clothes are lost and the only thing Mr. Berger had of mine was my overcoat and the gray suit that the jury saw me wearing yesterday. Who has my clothes, I still don't know, but nothing is at the jail, nothing was ever

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brought to the jail and how do I know that, all jewelry I had, which wasn't much, or \$5, incidentally they shipped that to Mr. Zeif's office, an attorney of mine and they didn't have any receipt or anything. Mr. Zeif being an honest man said "I think something was mailed here of yours" and that is how I recovered my watch. That is the whole story and why I couldn't answer yes or no because in a way you are right, Mr. Benigno didn't get anything from the jail, from me, he delivered apparently something to Mr. Berger and nobody knows where that is, but I have never seen Mr. Benigno, I have only spoke to his wife to ask how she was and how his kids were and haven't seen him to my knowledge in a couple of years.

You have spoken to him?

I said that. I spoke to him a couple of minutes a couple of days ago.

Q He was in touch with Mr. Berger about your clothes?

I assume so. He delivered, he claimed, something to Mr. Berger.

Is it your testimony when you paid Mr. Benigno to be the chauffeur, or to be your associate, or whatever that was work he was doing for Superior Plans or for you?

1	29 rmbr Coldenberg-cross 591
2	A I can't recollect. I would say, to the best
3	of my knowledge, for Superior Plans.
4	Q What was he doing for Superior Plans?
5	A Whatever the occasion called for at the time.
6	Q Well, for instance?
7	A This is over quite a period of time. Superior
8	Plans was involved with Kimis in this hotel business, also
9	advertising agencies, Sultana Stockings. I was talking
10	about several acquisitions at the time numerous things.
11	Q Yesterday on direct examination you testified
12	that you had worked for Transcontinental and that that
13	company was a multimillion dollar company and that you had
14	arranged for the purchase by that company of Spectrum, which
15	was a purchase for a couple of million dollars; is that
16	correct?
17	A Yes.
18	Q When was this, approximately?
19	A Don't recall.
20	Q '60s?
21	A It wouldn't have been before that. I think
22	it must have been in the very late '60s or early '70s.
23	Q You were involved with these companies during
24	the year 1968, is that right?
25	A I said the latter part of '60, I believe,

	1460 1
1	30 rmbr Goldenberg-cross 592
2	and possibly in '70.
3	Q You lived at 301 East 48th Street, you had
4	three apartments at the 19th and 20th floor, duplexes B, C
5	and D at that address?
6	A All that time.
7	Q No, during '68, for example.
8	A I can't be sure. I would say that that sounds
9	correct, yes.
10	Q You had Benigno working for you at \$200 a week
11	as a chauffeur and whenever Kimis was out of town you
12	picked up Eriss' tab, right?
13	MR. BERGER: Objection.
14	THE COURT: Sustained.
15	Q You had Benigno working for you at \$200 a week?
16	MR. BERGER: Objection.
17	THE COURT: Sustained.
18	We have been over this.
19	Q Yet isn't it a fact, Mr.Goldenberg,
20	that for the year 1968 you showed a negative income of
21	\$3,400 and paid no income tax for that year?
22	A If my income tax
23	MR. BERGER: Objection.
24	THE COURT: Yes, sustained.
25	MR. LITTLEFIELD: May I have just a moment, your

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	u	Q	
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1	rmbr Goldenberg-cross-redirect 593
2	Honor?
3	THE COURT: Yes.
4	(Pause.)
5	MR. LITTLEFIELD: I have no further questions.
6	REDIRECT EXAMINATION
7	BY MR. BERGER:
8	Q Mr. Goldenberg, after you learned of the indictment
9	in this case in April of 1975, you used the names of Morann,
10	Simmons and Cohen, is that correct?
11	A Only Cohen and Simmons was the same person.
12	Miss Simmons maiden name is Cohen and her regular name is
13	Simmons.
14	Q Did you ever use those names before April of
15	1975?
16	A Only the name of Morann for this bank
17	specific thing for a hundred dollars.
18	Q Were you using the name of Simmons after April
19	of 1975 for the purpose of avoding being arrested because
20	of an indictment?
21	A No, no. Everybody knew me as Goldenberg in
22	business.
23	Q Where were you residing in April of 1975?
24	A I believe in Diamond Bar, which is approximately

30 miles on the Freeway from Los Angeles.

	000
1	32 rmbr Goldenberg-redirect : 594
2	Q Is that where you were residing when you learned
3	of the indictment?
4	A Yes.
5	Q How did you learn of the indictment?
6	A I got a registered letter, I believe, three days
7	after I had already spoke to Mr. Littlefield and then
8	I got a regular letter that came faster than the registered
9	letter before that.
10	Q How many hours after you learned of the indict-
11	ment did you move?
12	A I believe a couple of months later.
13	
14	
15	
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19	
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1	33 lhbr Goldenberg-redirect 595
2	Q It was not hours?
3	A No.
4	Q Of course, you didn't leave a forwarding
5	address, did you?
6	In the post office. I went one place nine
7	month before, I gave my number address to the post office.
8	Q Between the time you were indicted and
9	the time that you were arrested, did you have any inter-
10	views with any members of the government?
11	A From the time I was indicted yes. You
12	mean physically or over the phone?
13	Q Either way.
14	A Yes.
15	Q Will you please tel the Court and the jury
16	approximately when, if you were called or if you did the
17	calling, who you spoke to and the subject matter of the
18	conversation?
19	A 10 o'clockin the morning there was a pounding
20	on my door, a pounding, pounding, thought it was funny,
21	I was almost leaving
22	THE COURT: If you can tell us when
23	Q When was this, after April, 1975?
24	A I believe it was after I was indicted, if
25	that's what you mean.
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I called him.

35 lhbr

Gold m berg-redirect

Q Did you tell him where you could be reached?

A I don't believe so. We didn't go into that.

He just said "Just keep on working with the department that now has it in California." They transferred by records from New York to California.

That I believe was with Mr. Blanchard. So

I spoke with Mr. Blanchard and he said "Mr. Goldenberg,

I want you to come in and talk about when you are going to

pay this \$5,000."

I said "Mr. Blanchard, it is a waste of time.

You want all \$4,000 at one time when I don't have it."

I said "Can we make a settlement of partial payments?"

He said "That's possible."

So he said "I want you to bring in all your financial statements so we can evaluate what kind of monthly payments you might be able to make."

I said "Well, my income fluctuates, and I would like to just give you an amount, and if I adhere to it, would that be okay?"

Q That was the discussion after you knew you were indicted?

A This last one that I am talking about was like four days before the government picked me up.

1	36 lhbr Goldenberg-redirect . 598
2	Q So the government knew where you were, is
3	that correct?
4	A Which part of the government, Mr. Littlefield?
5	Q There is only one government, Mr. Goldenberg.
6	This government. Did the United States Government know
7	where you were?
8	A I can't be sure because I could be in one room
9	sometimes and they don't know I am in the other room. It's
10	happened to me.
11	Q After you were indicted, did the United States
12	Government or any agency thereof know where you were?
13	A I really don't know for sure, but I was walking
14	around in public notice in every major hotel.
15	Q But you did speak to some members of the FBI?
16	A Oh, yes.
17	Q What name did you use?
18	A My voice is such that I couldn't have kidded the
19	anyhow.
20	Q Did you give them a name?
21	A Bernard Goldenberg. They knew my voice when
22	I said hello.
23	THE COURT: Mr. Goldenberg
24	THE WITNESS: I apologize. Bernard Golden-
25	berg.

-		605a	
1	37 1hbr	Goldenberg-redirect	599
2	c	Did there come a time when you spoke to	any mem-
3	ber of the	government and told them why you did not	want
4	to come to !	New York?	
5	A	Yes.	
6	Q	Whom did you speak to?	
7	A	The FBI and the marshals who arrested m	ne.
8	Q	Did you speak to anyone prior to your a	rrest,
9	why you did	n't want to come? Anyone in the govern	nmen t
10	prior to you	ir arrest, why you didn't want to come t	:0
11	New York?		
12	A	If you call the Police Department the	government
13	yes.		
14	Q	The Police Department of which state?	
15	۸	New York. The 51st Street Precinct.	
16	Q	Did you speak to them on the telephone?	•
17	A	Yes.	
18	Q	What did you tell them?	
19	A	I told them my life was	
20		MR.LITTLEFIELD: Objection.	
21		THE COURT: Sustained.	
22	Q	I show you what's been put in evidence	
23		Exhibit C, which is some redeipts that	
24	from Mr. Er	iss and others. Are those all of the re	eceipts

that you received?

1	38 lhbr Goldenberg-redirect 600
2	A No.
3	Q Do you know where the other receipts are?
4	A Yes. When I went to Washington, the
5	government asked me to give them all the copies and leave them,
6	they had to have the originals so that they could do some
7	studies or talk to perhaps Mr. Kimis, I really don't know for
8	sure, and I left the., all the documents that they wanted, which
9	like some of my other stuff I never got back.
10	Q In fact, did you send them a letter enclosing
11	the documents?
12	A Yes, and I had it notarized on each page.
13	Q I show you what's been marked Defendant Golden-
14	berg Exhibit E for identification and ask you if by looking
15	through it you recognize what that is?
16	A Yes. These are some more receipts from the
17	gentlemen you discussed I gave the money to.
18	Q Was this document mailed by withdrawn.
19	Is this a copy of the document mailed by
20	you to the addressee on this document?
21	A To the best of my knowledge, yes.
22	MR. BERGER: Offered in evidence.
23	MR. LITTLEFIELD: May I ask some questions about
24	it, your Honor.
25	mus course. Vos

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Goldenberg-redirect

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VOIR DIRE EXAMINATION

BY MR. LITTLEFIELD:

This letter, Mr. Goldenberg, where has it been for the last couple of weeks, with the attachments? Where was it yesterday?

- A I believe it was here yesterday.
- With whom?
- Mr. Berger's files, I imagine. A
- And the day before?
- I believe it was here too the day before.
- And the day before that?
- A I don't know.

MR. BERGER: Objection, your Honor.

THE COURT: I will permit it.

THE WITNESS: I don't know.

Did you give this to Mr. Berger? Q

I don't recall. I was up to his office and there was like three boxes of papers and papers, it took m e about 8 hours to read them. I can't be sure, I got so many documents I went through.

Q This document you say was originally written by you, was it not?

Yes.

Q Now it is in Mr. Berger's hands you said yester-

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it to her?

	234 608a
1	40 lhbr Goldenberg-redirect GO2
2	day?
3	A I would certainly turn over all the documents
4	pertaining to the case
5	THE COURT: No, please listen to the question.
6	Q Did you give this, furnish this document to
7	Mr. Berger?
8	A I said I don't know. I just saw it here yester-
9	day, to the best of my knowledge.
10	Q Do you know how he got it if you didn't give it
11	to him? Yes or no.
12	A Ves.
13	Q How did he get it?
14	A I had a lot of this particular case mailed from
15	my premises in California by Miss Simmons to Mr. Berger,
16	so he could study the case before I had it.
17	Q . You had it and then you arranged to have it
18	sent to Mr. Berger?
19	A I didn't say I had that. I said I was in jail.
20	I had Miss Simmons mail whatever pertaine to this case. It
21	took her four days to go over all my files, and I still got-
22	THE COURT: I really wish you would listen to
23	the question and then answer directly.
24	Q How did Miss Simmons have it? Did you give

	235 6098
1	41 lhbr Goldenberg-redirect 603
2	A She looked through my files.
3	MR. BERGER: Your Honor, may we approach
4	the bench?
5	THE COURT: No.
6	Next question.
7	Q Did you know over the last two or three days
8	that this document existed?
9	A I knew at least for the past two days it
10	existed. I always knew it did exist.
11	Q Did you know when you were on the stand yesterday
12	that it existed?
13	THE COURT: he said he has known for the last
14	three days that it existed. Was it here in court the
15	last couple of days?
16	THE WITNESS: I am almost sure, your Honor.
17	Q But when you offered receipts yesterday, you didn't
18	offer any of these, did you?
19	A I didn't offer anything. Things were handed to
20	me to read and explain what they were.

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Not ot the complete liking of the time that I

testified with Mr. Berger?

Q

would have liked to have. I just got out of jail.

Q You got out of jail a month and a half or so

Did you discuss your testimony before you

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	(20)
1	42 lhbr Goldenberg-redirect G()4
2	ago?
3	A Considering
4	Q When did you get out of jail?
5	A I have been out of jail now at the Seville Hotel
6	about three weeks, I believe.
7	MR. LITTLEFIELD: I am referring to the copies
8	of the receipts, your Honor. I will have no objection to
9	the copies of the receipts going into evidence. I do object
10	to the letter. As for the receipts themselves, I would
11	just ask
12	THE COURT: Have you offered them?
13	MR. BERGER: I have offered the entire docu-
14	ment, your Honor, because of the fact that
15	THE COURT: No. You offered the entire docu-
16	ment. Do you have any objection to the receipts going in,
17	the copies of these receipts going in?
18	MR. BERGER: No. I want them.
19	THE COURT: You offer them?
20	MR. BERGER: Yes.
21	MR. LITTLEFIELD: May I have a moment more of
22	voire direct, your Honor?
23	THE COURT: Yes.
24	BY MR. LITTLEFIELD:
25	Q Is it your testimony, Mr. Goldenberg, that

(Defendant's Exhibit E-1 was received in

25

605 That's

	2	38	612a	
1	44 lhbr	Go	ldenberg-redirect	606
2	evide	nce.)		
3		THE COURT:	They are in evidence.	Are you
4	finished wi	th the witne	ss?	
5		MR. LITTLEF	IELD: Yes.	
6	BY MR. BERG	ER:		
7	Q	When you ser	nt the originals of the	e receipts to
8	Internal Re		here a specific purpos	
9	were sent the		. ,	
10	A	My understa	nding was yes.	
11	Q	Do you recal	ll what that purpose w	as?
12	A	Yes.		
13	Q	What was it:	?	
14	A	They wanted	to analyze the handwr	iting and
15	I believe to	establish t	that this was the init	ials of the
16	people I gar	re the money	to.	
17	Q.	Did you ever	r get a report from th	e government
18			dwriting analysis?	
19	A		them, but they never	gave it to
20	me.			
21	Q	From April o	of 1975 through date,	have you been
22	receiving le		arious companies with	

25

A Yes.

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I show you these documents and ask if you can

doing business in the name of Bernard Goldenberg?

1	45 lhbr Goldenberg-redirect 6	07
2	identify them?	
3	A Yes.	
4	Q I show you this envelope and ask if you ca	ın
5	identify that?	
6	A Yes.	
7	(Defendant's Exhibit F was marked for	
8	identification.)	
9	Q Is this an envelope that was addressed to	you?
10	A Yes.	
11	MR. BERGER: Offered in evidence.	
12	THE COURT: While Mr. Littlefield is looki	ng at
13	that, I will sustain the objection to the letter, Exh	ibit E.
14	MR.LITTLEFIELD: May I have voir dire on	this,
15	your Honor?	
16	THE COURT: Yes.	
17	VOIR DIRE EXAMINATION	
18	BY MR. I.ITTLEFIELD:	
19	Q What is Fiduciary Funding?	1
20	A Fi uciary Funding is a company that I have	re
21	approximately 70 some odd percent interest in.	
22	Q Where were you living on December 16, 197	15
23	when this letter was postmarked and mailed to Fiducia	ry
24	Funding, P.O. Box 6430, Orange, California?	
25	A 19	

in an apartment.

		241	615a	1 44
1	47 1hbr	G	oldenberg-redirect	609
2	Q	How long a	fter that?	
3	A	I believe	several months.	
4		MR. BERGER	: No further questions,	your
5	Honor.			
6		THE COURT:	Any recross?	
7		MR. LITTLE	FIELD: I have no further	questions.
8		THE COURT:	You may step down.	
9		(Witness e	xcused.)	
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enberg rim. 385 2 iardi 176

MR. BERGER: The defense rests, your Honor.

MR. LITTLEFIELD: May we approach the Bench before the defense rests for one moment?

(At the side bar)

MR. LITTLEFIELD: This morning the government subpoensed Benigno to have him available if we decide to call him. Under the circumstances, we are not going to call him. How he is available if Mr. Le zer wishes to call him. THE COURT: No sense in charging abesent witness,

then.

MR. LITTLEFIELD: He is available to both sides.

THE COURT: So I am not going to give any charge on absent witness.

MR. BERGER: We don't need an instruction on that. I am not going to argue it either.

THE COURT: Do you rest?

MR. BERGER: I rest.

THE COURT: You have a motion for a judgment of acquittal?

MR. BERGER: Yes.

THE COURT: Which should have been made at the end of the government's case and was reserved. The motion is denied with an exception, the motion at the end of the government's case and at the end of the entire case.

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1	lh/lf Libowitz-Direct 611
2	(In open court)
3	THE COURT: All right, the defendant rests.
4	MR. LITTLEFIELD: The government calls Agent Libowitz
5	LEO LIBOWITZ, called as a witness on
6	behalf of the Government, having been first duly sworn,
7	was examined and testified as follows:
8	DIRECT EXAMINATION
9	BY MR. LITTLEFIELD:
10	Mr. Libowitz, could you tell the Court and jury
11	what you presently do?
12	A I am retired.
13	When did you become retired?
14	A At the end of December, 1974.
15	Q Prior to your retirement, what was your job?
16	A I was a special agent in the Intelligence Division
17	of the Internal Revenue Service.
18	Q How long were vou so employed?
19	A I was with the Interna . Revenue Service for 32 and
20	a half years.
21	Q Did you attend and participate in a number of inter-
22	views with one Bernard L. Goldenberg in 1972 in connection
23	with the audit of his personal and corporate Superior Plans tax
24	returns?
25	A Yes.

lh/lf Libowitz-Direct

Q Do you see in the courtroom the man Bernard L. Goldenberg?

MR. BERGER: Identification conceded.

THE COURT: Very well.

Q Do you recall approximately how many meetings there were, roughly?

A I don't recall precisely how many I attended.

There might have been five or six. I know there were a total of about fifteen meetings with Mr. Goldenberg.

Do you have specific recollection as to dates and the extent of what Mr. Goldenberg told you on any of these interviews?

A In general, yes, but specifically, no. I would have to refresh my recollection with the memoranda and the transcripts of the testimony that were prepared at the time.

I will show you, then, Government's Exhibit 41 for identification and sak you to look at that memorandum of conference and ask you if that refrashes your recollection as to statements made by Goldenberg, and I specifically refer to these two that are bracketed here, but you may want to look at the whole document to put yourself in context of that interview.

(Pause)

Q Have you looked at the document?

THE COURT: He looked at the document. What's the

money was?

		0206
1	lh/lf	Libowitz-Direct 614
2	А	Yes, sir
3	Q	That he had borrowed the money?
4	A	Yes.
5	Q	What was the date of that conference when he
6	told you	that?
7	A	October 11, 1972.
8	Q	Do you recall a meeting the next day on October 12th?
9	Do you re	call what he told you at that meeting?
10	A	Not offhand. I would want to see the memorandum.
11	Q	Was a memorandum prepared by you
12	А	There should have been a memorandum
13	Q	By you and Agent Digricoli and Agent Scrop, if you
14	recall?	
15	A	There was such a memorandum.
16	Q	I show you Government's Exhibit 42 for identification
17	and ask y	ou if that refreshes your recollection.
18	Α	Yes, it does.
19	la la	Did you sign that memorandum?
20	Α ~	Yes, I did.
21	Q	You read it over before you signed it, presumably?
22	٨	Yes.
23	Q	Could you read that memorandum and I ask you if that
24	refreshes	your recollection as to whether Mr. Goldenberg told
25	you that	ne received any documents from Mr. Gluskin in connec-

lh/lf Libowitz-Direct

tion with the \$540,000?

A Mr. Goldenberg, according to the memorandum, stated that he has no recollection of giving Mr. Gluskin any documents relating to the \$530,000 invested in Superior Plans, Inc.

Q Do you recall the so-called formal interview at the Internal Revenue Service Intelligence Division office, 35
Tillary Street, with Mr. Goldenberg?

A Yes, I recall it.

Q Do you remember who was present at that?

THE COURT: Do you need to look at the memorandum to recall?

THE WITNESS: I would want to.

(Pause)

Agent Digricoli, Revenue Agent Julius Scrop, and I was present in the capacity of Acting Group Supervisor on that date.

Q At that time do you recall whether -- by reviewing the memorandum, does it refresh your recollection as to whether Mr. Goldenberg said what his contact with that money that had come out of Superior Plans had been?

A In substance he told us that after he borrowed the money, he had loaned it to an individual named Arnold Kimis.

Q He told you that he had borrowed the money from

1 | 1h/1f

Libowitz-Direct

2 | the corporation?

A Yes.

Q He, in turn, had loaned it?

A Yes.

I ask you to review the memorandum and ask you if that refreshes your recollection as to whether up until that time, December 20, 1972, Mr. Goldenberg had turned over any receipts relating to this money to the government.

A No, sir, he had not. We had asked him on a number of occasions for some sort of documentary proof of these loans, and he had kept stating that he had such receipts, but he had never produced them. As a matter of fact, in the memorandum there is a statement to the effect that over a period of several months he had stated he could produce these receipts and would do so, and despite the fact that we had repeatedly asked to see those receipts, we hadn't seen them as of that date.

Q Was this formal interview, if you recall, terminated and continued in January to give him additional time to produce these documents? I will show you Government's Exhibit 46 for identification.

I would state that at the time, I don't recall whether we made a specific appointment for another date to continue the conference. My feeling was that at the moment when this

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memorandum was prepared, that we had completed the conference. 2 However, I indicated to Mr. Goldenberg that I was -- we 3 would be perfectly willing to receive these documents when 5 and if he would produce them. I have no clear recollection 6

- Was there another conference on January 23, 1973, Q and I ask you to refer to Exhibit 46 for identification?
 - Yes, there was.

that we continued the conference.

- Does that refresh your recollection?
- Yes, it does.
- Do you know whether it was on that date that Mr. Q Goldenberg produced these slips of paper?

Yes, sir. He submitted a batch of slips of paper on that date.

I show you what I ask be marked as Government's Exhibit 46A for identification.

(Government's Exhibit 46A was marked for identification.)

I ask you to look at Government's Exhibit 46A and ask you if that is -- if by referring to this original memo you can tell whether that was one of the exhibits turned over to you by Mr. Goldenberg on that day?

Yes, it was.

MR. LITTLEFIELD: The government offers this document,

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knowledge you had, that Mr. Kimis had received this money,

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2 didn't you?

A We had certain information that Mr. Goldenberg had transferred the funds to Mr. Kimis, to the extent that we knew that he had cashed many checks and that some of these funds had gone to the west. We had no knowledge as to what had happened to the large amounts of cash that Mr. Goldenberg had received.

- But you knew that certain cash went to Mr. Kimis, did you not?
 - A I have no clear recollection that we knew that, sir.
- Q You asked Mr. Goldenberg about Mr. Kimis before he volunteered any information about Mr. Kimis to you, isn't that true?
 - A Yes.
 - You are the one that brought up the name Mr. Kimis?
- A That may be.
- And you know for a fact that Mr. Kimis did receive a large portion of this money, don't you?
 - A No, sir.
 - O Did he receive any of it?
- A We believe he may have received some, but we have no clear knowledge of how much.
 - Q What is that belief based upon, Mr. Libowitz?
 - A To some extent on Mr. Goldenberg's statements that

My best recollection is that Mr. Goldenberg introduced

622 1h/1f 1 Libowitz-Cross Mr. Gluskin and Mr. Kimis and told Mr. Gluskin that Mr. Kimis 2 3 was assisting Mr. Goldenberg in this stock deal that they were concerned with. 5 When was this conference you had with Mr. Gluskin? 6 I don't recall the date. 7 Q Did you make a memorandum of it? That would probably be in the transcript of 9 testimony. 10 MR. LITTLEFIELD: I didn't hear the answer. 11 THE WITNESS: I said that would probably be in the 12 transcript of Mr. Gluskin's testimony. I do not recall if 13 I made a memorandum of it. 14 Q Did Mr. Gluskin tell you, in fact, that Mr. Goldenberg 15 had told Mr. Gluskin that he was giving cash to Mr. Kimis? 16 I don't recall that at all, sir. 17 So when you asked on October 12, 1972, about Mr. 18 Kimis, you had an idea that Mr. Goldenberg was giving Kimis 19 cash, but you weren't sure, is that correct? 20 I had an idea that Mr. Kimis was involved on the edges of the situation and we were trying to clarify how. 22 So that Mr. Kimis is not a totally fictitious person 23 to Mr. Goldenberg, to your knowledge, is he? 24 A To my knowledge, he is not fictitious.

Did you testify on direct that Mr. Goldenberg told

coldenberg, is that not correct?

1	lh/lf Libowitz-Cross 624
2	A No, sir.
3	Q Take a look at the fourth paragraph from the top an
4	read it. What does it say?
5	A Revenue Agent Scrop asked the taxpayer where his
6	records for the year 1967 were and the taxpayer said he did
7	not know
8	Q No, page two of the document dated October 11, 1972
9	That one.
10	A "When we inquired what these agreements were, Mrs.
11	Goldenberg said he would not at this time give any information
12	about these documents."
13	Q Who said?
14	A That's a typographical error.
15	So there are mistres in the document, are there no
16	A Yes. Apparently that's a typographical error we
17	did not catch, but I think the context of the sentence is
18	clear.
19	Q Unless Mrs. Goldenberg was there and told you that
20	her husband would not give you any documents.
21	A Mrs. Goldenberg was not there.
22	Q You are sure of that?
23	A Yes, sir. I never saw Mrs. Goldenberg.
24	Q Even though the document indicates that she may
25	have been, right?

	631a
1	lh/lf Libowity-Cross 625
2	MR. LITT EFIELD: 'Objection, your Honor. I'd like
3	to move that sentence read in its entirety.
4	THE COURT: Let me suggest this. The witness said
5	you never met Mrs. Goldenberg?
6	THE WITNESS: No, sir.
7	Q How many times did you personally interview Mr.
8	Goldenberg?
9	A I'd estimate about half a dozen.
10	Q Were other people with you?
11	A Always, to the best of my recollection.
12	Q Would you each ask him questions?
13	A Yes, sir.
14	Q For how long a period of time would this go on in
15	each session?
16	A It would vary from perhaps a half hour to an hour,
17	or so. I can't recall how long these things ran, although
18	most of our memorandum of interview or transcripts would
19	indicate the time. Here is one that ran from 10:30 a.m. to
20	3:30 p.m., but this was at his own home and there were many
21	intermissions. Here is one that ran from 11:00 to 3:30 p.m.,
22	and again at his home.
23	Q Let's take the one of October 11, 1972, which ran
24	from approximately 10:30 a.m. to 3:30 p.m., right?

With time out for lunch.

1	1h/lf Libowitz-Cross 626					
2	About howmany hours do you feel that inteview was?					
3	A I would say that the actual interview might have run					
4	about with intermissions for a total of about three hours.					
5	Q Your report is a total of four pages, is that right?					
6	A Yes, sir.					
7	Q So three hours of interview resulted in four pages					
8	of report, is that correct?					
9	A Yes, sir.					
10	Q Is this a complete document of what happened?					
11	A Yes, sir.					
12	MR. BERGER: I have no further questions.					
13	THE COURT: Anything further, Mr. Littlefield?					
14	MR. LITTLEFIELD: Just this one sentence.					
15	REDIRECT EXAMINATION					
16	BY MR. LITTLEFIELD:					
17	Q I ask you to read the sentence with "Mrs. Goldenberg					
18	A Which is the exhibit?					
19	Q October 11th.					
20	A "When we inquired what these agreements were, Mrs.					
21	Goldenberg said he would not at this time give any information					
22	about these documents."					
23	MR. LITTLEFIELD: I have no further questions.					
24	THE COURT: Step down.					
25	(Witness excused)					

| ---/-

MR. LITTLEFIELD: Might we have a short recess?

THE COURT: I was hoping we could get through with the testimony this afternoon. You don't have a witness available?

MR. LITTLEFIELD: I am not sure, your Honor, who is out there. I'd like to check and consult and determine whether I am going to call anybody else.

THE COURT: You mean you may not call another witness?

MR. LITTLEFIELD: I may not, your Honor.

so we don't have to file in and out?

MR. LITTLEFIELD: The other question is -- may we approach the Bench?

THE COURT: Members of the jury, why don't you take a recess.

(Jury not present)

MR. LITTLEFIELD: Your Honor, we have checked on this handwriting business and got a report back from Washington, and I feel I am going to have to have this fellow here the first thing Monday mornin; to respond to it. I also may have one other witness outside. That's why I asked for a recess. The report which Agent Scrop got back was that the analysis was not made because there were insufficient specimens. I would certainly want to have --

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THE COURT: If you want to have testimony to that respect, you are entitled to it.

MR. LITTLEFIELD: May I have just a moment to step outside?

THE COURT: The only other thing is if Mr. Berger wants to verify it himself, maybe you can stipulate to it.

MR. BERGER: I am sorry, your Honor.

THE COURT: I am not suggesting that you do it.

MR. BERGER: I just will point out the fact that my client made available to the government the receipts for the purpose of getting them to analyze the handwriting, and fr --

THE COURT: They want to produce a witness who will testify that there was insufficient --

MR. LITTLEFIELD: The handwriting exhibits were not sufficient for examination. The government wrote for more specimens which were not submitted.

THE COURT: Maybe you want your witness here. If you do, we will have him here.

MR. LITTLEFIELD: We will have the witness.

MR. BERGER: If they wrote for more specimens to my client, then I am willing to stipulate. But all I want to know is that they wrote to my client.

MR. LITTLEFIELD: This is a note that was just handed to me by the agent.

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THE COURT: Get your witness here and we will do that on Monday morning.

MR. LITTLEFIELD: May I step sutside?

THE COURT: Yes. If you put him on, how long will he be?

MR. LITTLEFIELD: Very short.

(Recess)

MR. LITTLEFIELD: Your Honor, the government rests, subject to this matter on Monday morning.

THE COURT: All right. There is no sense in your resting yet until we see what happens Monday morning. I don't think there is any need for anybody to rest yet. It is really a technicality, but I guess a lot of laws are technicalities. If we do have any testimony on Monday morning, I anticipate that it will be extremely brief. We will have summations after that and the charge of the Court. The attorneys have told me the time that they are going to take to sum up, but I don't believe them, but the possibility is that you will have the summations and the charge of the Court to you before lunch. As a matter of fact, what I do usually in cases like this, when you come in Monday morning, you will be greeted with luncheon menus, and you can select your lunch because it will probably be ist about the time that I finish my charge to you that it will be time for lunch, and rather than take an hour

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or an hour and a half to go to a restaurant here where you would have to be in the custody of the marshals, and all of that, you can get a pretty good lunch here, and I think I have found over the years that most jurors do like to do it that way, not that you should deliberate while you are having your lunch, but it will save you time if you have it informally in the jury room. So we will have your luncheon menus ready for you and you will have all the time that you want to deliberate. My charge I expect will take about 45 or 50 minutes in explaining the law to you. I am glad I didn't have to give it to you today. I have been fighting a cold here, as some of you probably have noticed. Maybe it will be gone by Monday morning. We see not going to be together in the next few days and you will run across a lot more people over the weekend than you have since you have been selected as jurors here. I know that you followed my instructions not to discuss the case with anyone, and you will have more opportunity and free time this weekend, but don't let anybody discuss i with you. As I have said, you are the ones who have seen the witnesses, you have observed them, you had the chance to see what your opinion of them was as to their credibility, thoir demeanor, and so forth. No one else can substitute for what you have seen here. It has got to be your decision. So don't make up your mind about the case, don't let anybody discuss it

with you. Have a very pleasant weekend.

I have a matter on on Monday morning and I am not going to start until ten o'clock. We will start our case at ten o'clock. I would have preferred to start earlier, but I have a matter on that's going to take a few minutes, and I know that we won't be ready until then. I fully expect, however, that I will have everything cleared up by ten o'clock and we can get started at that time promptly. Have a pleasant weekend.

(Jury not present)

THE COURT: Mr. Berger, I haven't officially marked your requests to charge, but we did go over them, and are you satisfied with the fact that I have ruled sufficiently on your requests?

MR. BERGER: Yes, sir.

THE COURT: The only additional matters that I think
I am going to charge are three: flight, the use of an alias
and false exculpatory statements. Other than that, it is the
boilerplate beginning and the ending on reasonable doubt and
jury's function, and so forth. Also, we have the conviction for
a crime, but you expect that.

MR. BERGER: I object to any instruction on flight.

If there is to be an instruction on flight, of course I would

like to have an opportunity to submit one.

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THE COURT: You submit one to me. I think there is sufficient in here for me to charge the jury. Your submit one to me.

MR. BERGER: With the understanding that I am not withdrawing my objection to any instruction, but I merely want to protect myself.

THE COURT: I understand.

MR. BERGER: About the suitcase --

MR. LITTLEFIELD: The agents are upstairs. I talked to them. They are resisting returning any of the matters saying that it is all acquired out there. I will have Mr. Berger talk personally to Mr. Labarge before Mr. Labarge goes back to California to see if there is anything they can work out directly. Labarge wants to have the stuff in California.

THE COURT: I can't do anything about it. It is in California. I have attempted to see what I can do. I have no control over it.

MR. LITTLEFIELD: We will arrange now to have Mr. Berger meet with Mr. Labarge now, your Honor.

(Court adjourned)

639a iard1 lh/lf 1 UNITED STATES OF AMERICA 2 75 Crim. 385 3 vs. BERNARD L. GOLDENBERG 4 April 12, 1976 5 6 (In open court - jury not present) 7 THE COURT: Gentlemen, I showed you my charge. 8 you have some suggestions?

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MR. BERGER: With regard to your Honor's supplemental charge, instruction number three, which has to do with fabrication of documents. I don't recall any evidence in this case that any documents were fabricated. I do recall questions being asked of the witness and the answer being no, and, of course, the questions are not evidence. If your Honor will call my attention to what evidence was introduced with regard to fabrication of documents, perhaps I am wrong in believing that there was no such evidence.

MR. BERGER: I do, your Honor.

THE COURT: Go ahead, Mr. Berger.

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THE COURT: Could there be circumstantially, I suppose -- I don't want to argue Mr. Littlefield's case at all any more than I would want to argue your case on a point, but is it circumstantially possible that when he failed to present any documents as requested at each of the first five, six, seven, eight or whatever it was interviews and then subse-

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quent thereto did produce some documents, is that what you are basing it on, Mr. Littlefield?

MR. LITTLEFIELD: That, yes, and specifically those two minutes of Superior Plans, the alleged minutes of Superior Plans board meetings. Those I think circumstantially are the most powerful --

THE COURT: I am not going to say that there is evidence in this case that the defendant fabricated evidence.

MR. BERGER: Your Honor, first of all, at most of the interviews the defendant was given his Fifth Amendment -he was givenhis warnings. He had a right to produce nothing. When a time came that he decided to produce something, it was a matter when he decided to waive his privilege. With regard to the receipts, there has been no evidence that those have been fabricated. With regard to the question of the minutes, when Mr. Goldenberg was asked whether, in fact, he had fabricated those minutes, he said no. So the only evidence we have is the fact that the question was asked. All along Mr. Goldenberg was asked to produce documents, and if the minutes or the transcripts of some of the interviews were seen, you would see that Mr. Goldenberg, of course, on many occasions took his Fifth Amendment privilege. I don't believe the fact that the document was delivered in 1974, which is sometime prior to the indictment, over a year prior to the indictment is evidence

 without more that it is a fabricated document, unless there
was some prima facie proof, outside of the fact that it was not
delivered for a period of time, to show that in fact it was
fabricated.

THE COURT: Let me suggest this. I think that circumstantially there is at least some basis for it. I would charge not in the language that I have here but in the following: if you find on the testimony in this case that defendant submitted fabricated documents intended to mislead the authorities and that they were, in fact, spurious, and that the defendant participated in the making of it, you may consider that fact as probative of the defendant's guilt. I will not put in the last sentence, the fabrication, et cetera, treated as strong evidence of guilt. I will not charge that. I will charge just the prior portion.

MR. BERGER: I would like a refinement of that instruction because of the fact that there was documentary evidence outside of the minutes, which are the receipts. Does your Honor feel that the receipts should be included as part of that -- should an inference be given to the jury that the receipts have been fabricated when, in fact, again there is no such evidence? I would strong object to that.

THE COURT: I think just putting it in the language
have is sufficient to cover all aspects of whatever they may

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consider is fabricated here.

MR. BERGER: Based upon the fact that I feel there is no such evidence, I would object to the instruction. other instruction that I would object to is supplementary instruction number four where the words were used by your Honor to avoid identification. I feel that the words should be to avoid apprehension in that instruction rather than identification.

THE COURT: All ri ht, yes. To avoid apprehension, all right. That word has a different meaning, doesn't it? Everything else seems to be --

MR. BERGER: Yes, your Honor. The balance of the instructions seem very fair and reasonable.

MR. LITTLEFIELD: One which the government wishes to urge on the Court is slightly more on the question of what income is. Over the weekend I did considerably more research, your Honor, and read the leading Supreme Court case, which is James versus United States, which specifically says that gross income is a broad phrase intended to include "All gains except those specifically exempted." That follows along with the regulations to Section 61, your Honor, which define gross income as meaning all income from whatever source derived, unless excluded b/ law. I think that it is important to put --

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THE COURT: That's your original request number five?

MR. LITTLEFIELD: Yes. But it is nowhere in what I understand is left in my original request, nowhere does it say that income is all rains except those specifically exempted or specifically excluded. I think that's a vital part of the defense, and I would ask that pursuant to James versus United States you quote from supplemental request number one.

THE COURT: What do you say, Mr. Berger?

MR. BERGER: I say that's begging the question, your Honor. Maybe that is law as far as the Internal Revenue Service is concerned in reporting income, but that's taking the position that it is a gain. Yes, all gains are income, true. But not all money received by an individual -- for example, loans, capital investment, which is the question here -- in other words, the question is was it a gain? For example, if it was a loan which Mr. Goldenberg never intended to repay, that would have been a gain. If it were aloan that he intended to repay but then sometime down the line he did not repay, or for example let's suppose that in 1970 he decided intentionally not to repay, that would not have been a gain in 1968.

THE COURT: It has to be as of the time that he made the loan.

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MR. BERGER: That's right. I feel that the request made by the government may be a proper interpretation of what income is, but, then again, it must be a gain. So what we are doing is we are begging the point. That's the issue for the jury to determine, was this a gain.

THE COURT: I think what I have got in here, Mr. Littlefield, is adequate.

MR. LITTLEFIELD: Except I think there are two subtleties. One is that income is anythin; coming in, except when
it is specifically exempted. In other words, any money coming
in to you is specific unless you prove that it is a loan or --

THE COURT: You would be satisfied, then, if I put all income from whatever source derived --

MR. LITTLEFIELD: Unless excluded by law.

MR. BERGER: That in effect would be changing the burden of proof in a criminal case.

MR. LİTTLEFIELD: No. That's the definition of income.

MR. BERGER: Not as far as instructions in a criminal case go. You do not put the burden of proof on a defendant in a criminal case. Perhaps in a civil matter, but in a criminal case the burden of proof never shifts to the defendant.

MR. LITTLEFIELD: This is merely a definition. It has nothing to do with income.

THE COURT: This is the definition of income, unless excluded by law.

MR. LITTLEFIELD: I hand up the definition, your Honor, 161, the first sentence.

THE COURT: I don't see that that's a problem. I don't think it shifts the burden.

MR. BERGER: I would have to argue, then, your Honor, what is and what is not income as far as exemptions. I argue to have to argue law to the jury, which I don't want to do. I don't feel it is my province to argue law to the jury.

MR. LITTLEFIELD: You just have to argue, if I may address the Court, that it was a loan that he intended to repay. Then there is no problem.

MR. BERGER: That's shifting the burden. It is the government's burden to prove that it was a loan that the defendant did not intend to repay.

MR. LITTLEFIELD: The burden is a separate question.

THE COURT: I think the burden is a separate question

from this, Mr. Berger, I really do.

MR. BERGER: If the definition of income does not subtly change that burden of proof by creating an inference that it is the burden of the defendant to prove in this case that it was not a gain, I could see it. But I can see the

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danger of the government's requested supplemental instruction inferentially and subconsciously changing the burden of proof and who it rests upon.

THE COURT: I don't see that. I don't read it that way or think that it should be read that way or that a jury would read it that way.

MR. BERGER: For those reasons, I do object to it, your Honor.

THE COURT: Are you going to put another witness on or not?

MR. LITTLEFIELD: Yes. Two witnesses have come up from Washington.

THE COURT: Do you want to put them on the stand now? We will put the jury in.

(Government's Exhibit 52 was marked for identification.)

(Jury present)

THE COURT: Good morning to all of you. We are a little bit late, but we were busy. We will get to you today with the charge. We have a couple of short witnesses this morning and then the summations. My charge will either be just before or just after lunch. One or the other.

BILL HYATT, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows: 1h/1

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Hyatt-Direct

MR. LITTLEFIELD: Your Honor, before I direct questions to the witness, the parties have stipulated that Government's Exhibit 52 is the copies of the little receipts or chits which Mr. Goldenberg gave to IRS Agents Libowitz, Scrop and Digricoli on January 23, 1973, at the meeting at the IRS headquarters. So I offer Exhibit 52.

THE COURT: Received.

(Government's Exhibit 52 was received in evidence.)

DIRECT EXAMINATION

BY MR. LITTLEFIELD:

Q Mr. Hyatt, could you tell the Court and jury by whom you are employed and in what capacity?

A I am an attorney with the Criminal Section of the Tax Division, the Department of Justice in Washington.

Q What are your duties there?

A To review the tax prosecutions that a proposed by the Internal Revenue Service, to make recommendations as to whether they are legally sufficient to be prosecuted, and then in many instances to prosecute the cases.

Q Do you know Bernard L. Goldenberg?

A Yes.

Q Do you see him in court?

MR. BERGER: Identification conceded, your Honor.

THE COURT: All right.

Hyatt-Direct

Q In connection with your work with the Internal Revenue Service, did you have occasion to meet with Mr. Goldenberg?

A Yes, sir.

Q Tell the jury when you met with him and what happened theleafter?

A The Internal Revenue Service proposed prosecution of Mr. Goldenber; by a letter dated September 24, 1973. One of the policies of the Department of Justice is if someone wants to come in and present their side, they are certainly permitted to do this by a conference. Mr. Goldenberg called and requested a conference and a letter was then sent to him on October 4th setting a conference date of October 26th.

Q Have you a copy of that letter?

A Yes, sir.

Q We will take this opportunity to mark whatever the exhibits are that you are going to introduce.

A Do you want me to wait while you complete that marking?

(Government's Exhibits 53 through 57, inclusive, were marked for identification.)

Q You say a letter was written to Mr. Goldenberg, is that right?

A Yes.

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Hyatt-Direct

Q What exhibit number is that?

A Exhibit 53.

MR. LITTLEFIELD: The government offers Exhibit 53.

MR. BERGER: No objection.

THE COURT: Received in evidence.

(Government's Exhibit 53 was received in evidence.)

THE WITNESS: As a result of this letter --

THE COURT: No. This is a letter you sant to Mr.

Goldenberg. Next question.

Q What happened as a result of that letter and describe the events thereafter?

A As a result of this letter, which basically just says pursuant to your telephone request for a conference made to Mr. William Hyatt of this office, conference has been scheduled, and set a date, subsequently two conferences were cancelled at the last minute due to the inability of Mr. Goldenberg to come to Washington. On two occasions, and I am sorry I don't have the date for you, Mr. Goldenberg did come to Washington, and for various reasons decided not to present his defense at that time. Finally on, I believe it was, November 13th, I was in Brooklyn trying another tax case, and he had spoken to me shortly prior to my coming to Brooklyn and said, "I'd like a conference."

I said, "Fine, we will meet you sometime after the

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"trial." I guess sometime around ten or eleven o'clock that night he came to the courthouse in Brooklyn and we did have a conference at that time where he showed what he considered the defenses that showed why he should not be prosecuted.

Q Could you tell the Court and jury what he told you at that time and what he presented?

A All right. To the best of my recollection, there were four people present. There was an attorney from my office, Frank Murray, I was present, Mr. Goldenberg was present and a young woman who he declined to identify was present. I assumed to be a witness --

MR. BERGER: Objection.

THE COURT: You can't say who it is.

A (Continuing) A young woman was present whose identity was not made known to me. The conference lasted about an hour, and I really can't tell you at this point much of what went on. I remember the highlights of the defense. I did make a memorandum which is reflected by Government's Exhibit 57 summarizing the defenses which were presented by Mr. Goldenbers at that time.

Q What did he tell you?

A The initial defense was that the funds that he had received actually represented a loan to him from his corporation, and as this defense started, I made a remark to the effect of,

"If you received this money with no intention to pay it back from what appears to me to be a shell corporation, this would still be income to you" --

MR. BERGER: Objection, your Honor.

THE COURT: I will permit it. This is not for the truth of it. This is not being taken for the truth of the statement, but merely that the statement was made.

A (Continuing) At this point Mr. Goldenberg explained that actually he got only a very small portion of the money, that the vast majority of the money was passed on to a man whose name I believe was Arnold Kimis, K-i-m-m-e-s, I believe it was. That was his explanation of where the money was. I believe this was an investment in a hotel, and he then characterized Mr. Kimis and how Mr. Kimis got the money from him.

Q This is what he told you after he initially told you that he had borrowed it from the corporation?

A Yes. Yes. He was not specifically denying that he had borrowed the money from the corporation. He was saying in effect, a second defense, as I understood it, that he got only a small portion of the money going to his corporation and coming to him as a loan and that the vast majority of the money was money which he actually had to pass on to Mr. Kimis.

Q Did he present any documents during this meeting?

1 Hyatt-Direct 648 1h/1f 2 Yes, sir. A 3 Specifically little receipts? Q 4 Yes, sir. ō Do you have those with you? Q 6 I am sorry, excuse me, that's not correct. At this 7 point in time he submitted Xerox copies of receipts which he 8 marked as to be the pertinent portions to be examined. 9 Was this whole packet of documents what he submitted? 10 Yes, sir. 11 MR. LITTLEFIELD: Mark these, please. 12 (Government's Exhibit 58 was marked for identification. 13 What were the conditions, if any, under which he sub-14 mitted these documents, according to him? 15 I really can't tell you the exact language. What 16 he indicated to me was that these represented his defense, 17 they were not being presented to me to stick in the government s 18 case and ship or and use to prosecute him. They were being presented to me to have examined these little -- I don't know 19 20 whether you can see them from here or not, there are 21 initials included within these circles. He said, "Examine 22 these and you will find that this is the handwriting" -- I 23 think the names were Eriss, Feinberg and Kimis, and they 24 represent the money that was given to Mr. Kimis. I would have

said something to the effect, "Okay, fine."

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at the meeting in 1973, January, in Brooklyn, We are now

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Hyatt-Direct

talking about a November meeting with Mr. Hyatt.

MR. BERGER: No objection.

(Government's Exhibit 58 was received in evidence.)

THE WITNESS: These documents, when I say these documents I am referring to Government's 58, were then delivered to a handwriting expert that works for the government, who is physically across the street from me in Washin ton, named Philip White. I delivered those to him on December 13, 1973, for his examination. Mr. White contacted me some days later, sometime before January 7th, and said in effect, "Hey, I can't do anything with these. I just don't have what I need." Based on that, then, a letter was written to Mr. Goldenberg. Like most everything in the government it is signed by my superiors. I actually wrote the letter. It is number 54 for identification.

MR. LITTLEFIELD: The government offers Government's Exhibit 54 for identification.

THE COURT: No objection?

MR. BERGER: No objection.

THE COURT: Received in evidence.

(Government's Exhibit 54 was received in evidence.)

Mr. Goldenberg -- I won't burden you with it, it just says in essence that the document examiner can't do anything with what

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	1	lh/lf Hyatt-Direct 649	
	2	you presented. If you want to pursue this defense, you will	11
	3	have to give him something that he can work with, including	
	4	exemplars. At this point my knowledge was stopped. Mr.	
	5	Goldenberg did call me on the phone once and say that he wa	98
	6	going to deliver these documents in person to Mr. White.	
	7	Q Did you later hear from Mr. White?	
	8	A Yes.	
	9	Pursuant to that, what did you do, if anything?	
	10	A I received it is still in the envelope in which	eh
	11	I got it a series of documents, which you may want.	
	12	Q From Mr. white?	
	13	A From Mr. White, and a lab report from Mr. White.	
	14	I did not receive the two at the same time.	
	15	MR. LITTLEFIELD: Mark as Government's Exhibit 59) the
	16	envelope with the chits.	.
xxx	17	(Government's Exhibit 59 was marked for identific	ation.
	18	MR. LITTLEFIELD: Government's Exhibit 60, the la	ь
	19	report.	
xxx	20	(Government's Exhibit 60 was marked for identific	ation.
	21	Q You received those for safekeeping, is that right	?
	22	A Yes.	
	23	Q You held them?	
	24	A I put them in this file folder, the individual fi	le
	25	I keep on cases that I have looked at physically in my off	

Exhibit number 56, to Mr. Goldenberg.

your Honor.

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MR. LITTLEFIELD: The government offers Exhibit 56,

MR. BERGER: Objection, your Honor.

THE COURT: Let me see it, please.

(Pause)

THE COURT: No, I will receive it.

(Government's Exhibit 56 was recei.ed in evidence.)

Where was that letter sent? Q

This letter was addressed Bernard L. Goldenberg, Pro Se, which is I guess the Justice Department's way of saying he represents himself, Duplex 19-20D, 301 East 48th Street, New York, New York 10017.

Q What happened to that letter, if you know?

My recollection is that this letter was returned, "Addressee moved, left no forwarding address." I am afraid at the time that I heard about this case, my office had already closed and there was no way for me to physically get in to get the file copy to verify that. That is my recollection, that at this point we did not know where Mr. Goldenberg was.

This was Friday afternoon when you were contacted --

You got hold of me about a quarter of six Friday afternoon, yes, sir.

MR. LITTLEFIELD: I have no further questions of Mr. Hyatt, your Honor.

Hyatt-Cross

(Defendant's Exhibit G was marked for identification.) CROSS EXAMINATION

BY MR. BERGER:

Q Mr. Hyatt, I show you what's been marked as Defendant's Exhibit G and ask you whether you received this letter or saw it in the file as a result of any of the correspondence that you mailed out?

A No, sir.

You have never seen that?

A I have now seen it, yes, sir. I saw it this morning.

Q Do you know whether this was received by someone in your office or by Mr. White?

A I know the government seems altogether -- this would have been sent I assume to Mr. White at his office across the street, and presumably would have been kept by him. I have not seen it until this morning, as I say.

Q Do you know whether this was part of the government's file?

MR. LITTLEFIELD: Mr. Berger, Mr. White will be the next witness.

MR. BERGER: Fine.

Q Mr. Hyatt, you testified that you had insufficient documentation in order to make a determination as to whether the initials on those receipts represented the writings of Mr.

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Hyatt-Cross

Eriss and Mr. Kimis and Mr. Feinberg, is that correct?

I indicated that that's what the expert told me.

When he told you that, was that because you had received copies rather than originals?

A The Exhibit 54, the letter was actually written to Mr. Goldenberg: "The document examiner to whom these documents were submitted has advised us that the documents are of such poor quality that no conclusions can be reached. If you wish us to make further attempts to verify the authenticity of these receipts, it will be necessary for you to provide us with the originals, together with any other original writin;s of any of the purported authors to which you have access."

Q Thereafter do you know whether your office or anyone at Internal Revenue did receive the originals or any part of the originals?

I found that out when Mr. Phil White sent me his report, yes, sir.

Q Thereafter did you get another report from Mr. White?

I only have one report, sir.

Did Mr. White tell you the results of any examination he made of the originals?

In his Exhibit 60, sir, not in evidence, but it does indicate what the results of that examination were.

Without reading from that document, do you know

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Hyatt-Cross

whether they were able to make a determination as to the authenticity of the receipts and the signatures from those originals?

- A In answer to your question, they were not, sir.
- Q Do you know why they were not?

A I can read you the reason. Independent of that, I don't know, sir.

Q At the time of the investigation of Mr. Goldenberg's taxes for 1968, had you or anyone in your office or anyone in Internal Revenue issued subpoenss on Mr. Goldenberg?

A I am afraid I can only answer for myself. I certainly hadn't.

Do you know whether you had the power, your office, had the power to subpoens Mr. Eriss, subpoens Mr. Kimis, subpoens Mr. Brandt, Mr. Feinberg, in order to get handwriting exemplars from them?

A The question would be can they be brought before a grand jury, and the answer would be yes.

- Q . Do you know whether they were?
- A I have no idea.
- Q You have nothing in your file to indicate that hand-writing exemplars were ever taken by the government of Mr. Eriss' handwriting, of Mr. Brandt's handwriting, of Mr. Kimis' handwriting or of Mr. Feinberg's handwriting, do you?

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1	lh/lf Hyatt-Cross 655
2	A There was contact with Mr. Kimis that I specifically
3	recall by the government so listing information on this case.
4	Q Did you attempt to get a handwriting exemplar from
5	Mr. Kimis?
6	A I did not, no.
7	MR. BERGER: I have no further questions.
8	THE COURT: Any redirect?
9	MR. LITTLEFIELD: No, your Honor.
10	THE COURT: Step down.
11	(Witness excused)
12	PHILIP A. WHITE, called as a witness on
13	behalf of the Government, having been first duly sworn,
14	was examined and testified as follows:
15	DIRECT EXAMINATION
16	BY MR. LITTLEFIELD:
17	Q Mr. White, could you tell the Court and jury by
18	whom you are employed and in what capacity?
19	A I am employed by the Bureau of Alcohol, Tobacco and
20	Firearms, United States Treasury Department, as a questioned
21	documents examiner.
22	
23	Could you briefly state your qualifications for that
24	Job?
25	A I received apprenticeship training from a now retired
	documents examiner, Robert F. Broscow. I have read and studied

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1	lh/lf White-Direct 656
2	the various texts in the
3	THE COURT: Do you concede the qualifications?
4	MR. BERGER: Yes.
5	THE COURT: That means Mr. Berger concedes that
6	this witness, Mr. White, is an expert in the field of examining
7	questioned documents, is that correct?
8	MR. BERGER: Yes, your Honor.
9	Q Did there come a time in 1973 when Government's Exhibit
10	58 was turned over to you for handwriting analysis by an
11	attorney with the Internal Revenue Service, William Hyato?
12	A Yes, sir.
13	Q Pursuant to it being turned over, did you attempt
14	to make a handwriting what handwriting comparison were you
15	asked to make?
16	A Within
17	MR. BERGER: Objection, your Honor.
18	MR. LITTLEFIELD: I will rephrase the question.
19	Q What did you do when you got those documents?
20	A I attempted to make a comparison of the writings
21	appearing on the various pages within Government's Exhibit 58.
22	Q Were you able to make any such comparison?
23	A No, sir.
24	Q What did you do?
25	A I returned them to Mr. Hystt.

your Honor.

MR. BERGER: No objection.

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THE COURT: Received in evidence.

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(Government's Exhibits 61 and 59 were received in

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evidence.)

Honor?

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MR. LITTLEFIELD: May I read 61 to the jury, your

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THE COURT: Yes.

MR. LITTLEFIELD: Letter addressed to Mr. Philip White dated March 13, 1374, Alcohol, Tabacco and Firearm Divisions, Forensix Laboratory, Internal Revenue Service, 10th and Pennsylvania Avenues, Washington, D.C. 20530:

"Dear Mr. White: Mr. Hyatt of the Department of Tax Division with offices located at Room 4609 at 10th and Pennsylvania Avenue, Washington, D.C., at the Department of Justice has informed me that you were to be mailed certain specific papers that involved my situation with the government under case number 5-51-12086. I am herewith enclosing the following papers for your inspection. These papers are originals and, therefore, I have brought these papers before a notary to be acknowledged that said papers are original and that the notary personally has mailed these papers to you at the above address, thus eliminating any possible problems that could arise in the future over these papers. I would appreciate you holding these papers until you personally can turn them

"over to me after your proper examination. It is understood as per my conversation with Mr. Hyatt that these documents are my personal documents and are only being made available at the request of the government for a more thorough examination over the photostats that were previously submitted. These documents are to be turned over to me personally within seven days written request."

Document 1, signature of William Eriss, Bernard L. Goldenberg and Abraham L. Metz, original.

Two lists all the chits, initials of Billerest,
August 9, 1968, \$4,000, describing each of the chits, up to
the 15th. Page 2.

"The above documents are representations of three different executed signatures, initials, several of each, however, I have not enclosed all the documents executed by initials of these men. I trust that the documents will be of considerable more help in your final determination. I would have appeared personally, however, I have been sick with a serious kidney infection, et cetera, during the time we were first scheduled to get to gether. I am sorry for any past inconvenience to your schedule. Sincerely, Bernard L. Goldenberg, c/o Superior Plans, Inc., Apartment 20D, 301 East 48th Street, New York City, New York 10017," copy to Mr. W. Hyatt. Then the notary down below, "I. Thomas Kriegel, Notary Public, hereby

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White-Direct

Q Had you made an earlier report on what you had done with respect to the Xerox copies?

- A Yes.
- Q Have you got a copy of that?
- A Yes.

(Government's Exhibit 62 was marked for identification.)

- Q You already testified about your finding based on the Xeroxes, and that's reported in a lab exhibit, is that right?
 - A Yes, sir. Exhibit 62.
 - Q What was that finding?
- A That I could not make a proper examination because of the documents.
- Q You then requested Mr. Hyatt to get you the originals, certain originals were sent you, and you were still not able to make any comparison, is that ri ht?
 - A That's correct.

MR. LITTLEFIELD: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. BERGER:

Q Mr. White, when making a comparison, do you know whether the government sometimes requests either by way of subpoena or otherwise that the individual whose signature is

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1	lh/lf White-Redirect	663
2	REDIRECT EXAMINATION	
3	BY MR. LITTLEFIELD:	
4	Q Looking at Government's Exhibit 8, wh	ich is the Xer
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6	to the back page, this exhibit here. 4/4/69, \$14	
7	is in evidence. Is there writing underneath the	
8	A Yes, sir.	
9	Q What does it say on that Xerox?	
10	A "Final payment in full, 90,800 shares	."
11	When you received the originals, did y	
12	that particular chit? I will show you th	
13	can determine whether you did or not. This one	
4	A No, sir.	
.5	Q I show you Defendant's Exhibit C and I	ask you if
6	looking at these, if you are able to tell whethe	
7	\$14,537 chit is in that group?	
8	MR. BERGER: Objection, your Honor.	
9	THE COURT: I will permit it.	
0	A There is within Defendant's Exhibit C	a piece of
1	paper that has a portion of the writing that's o	n the Xerox
2	copy of the chit I mentioned.	
3	Q You say this yellow sheet here is a po	rtion of this
4	Xeroxed form?	
5	A Yes.	

	1	lh/lf White-Redirect 664
	2	C The yellow sheet, can you tell if the yellow sheet
	3	has been what the difference between the yellow sheet and
	4	this Xerox is?
	5	A The yellow sheet which is the original has had the
	6	bottom portion cut off, the bottom portion being the words
	7	I read previously.
	8	These words are "Final payment in full 90,800 shares"?
	9	A Yes.
	10	MR. LITTLEFIELD: May I hand these to the jury,
	11	your Honor?
	12	THE COURT: Yes.
	13	MR. LITTLEFIELD: I have no further questions of
	14	this witness.
	15	THE COURT: Any recross, Mr. Berger?
	16	MR. BERGER: No further questions.
	17	THE COURT: You may step down.
	18	(Witness excused)
	19	MR. LITTLEFIELD: I have one further exhibit.
xxx	20	(Government's Exhibit 63 was marked for identification.)
	21	MR. LITTLEFIELD: The government offers 63, your Honor.
	22	MR. BERGER: No objection.
	23	THE COURT: Received.
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	25	(Government's Exhibit 63 was received in evidence.)
	-	MR. LITTLEFIELD: May I just show to the jury, your
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Honor, what this is?

THE COURT: Can you read it to them or does it have to be visibly seen at this moment?

MR. LITTLEFIELD: It is a letter to "Bernard L. Goldenberg, 301 East 48th Street, New York, New York, marked not deliverable as addressee, unable to forward, New York, New York." The date on the document is April 14, 1975, your Honor.

THE COURT: Anything further?

MR. LITTLEFIELD: No, your Honor.

THE COURT: Government rests?

MR. LITTLEFIELD: Yes, your Honor.

THE COURT: Defendant rests?

MR. BERGER: The defendant rests, your Honor.

THE COURT: Both sides rest.

(At the side bar)

THE COURT: You move for a judgment of acquittal?

MR. BERGER: Yes.

THE COURT: Motion denied with an exception. I believe there is a question of fact. How long will you take to sum up?

MR. LITTLEFIELD: Probably about 45 minutes.

THE COURT: You, Mr. Berger?

MR. BERGER: 45 minutes, your Honor.

THE COURT: That will take you to lunch. Rebuttal of about five minutes?

MR. LITTLEFIELD: I am afraid --

THE COURT: I really mean this now. I don't like to see a lebuttal used as a second summation. I think it should be confined as a rebuttal to what is stated and should be short, concise and to the point and cover only those elements that weren't originally covered in your original summation, except as it may preliminarily have to be done to state something on rebuttal. That's the purpose of it and let's stick to it.

We will have summations. We will take a short recess after Mr. Littlefield's summation.

(In open court)

THE COURT: Members of the jury, we have reached the point in the case where all the testimony has been presented to you. Counsel now get the opportunity of iddressing you in what is called summation. The summation is designed for the counsel to review to you what facts they think have been established here by the testimony and what reasonable inferences that may be deduced from the facts that they believe have been established. As I indicated to you at the outset of this trial, nothing counsel say throughout the course of the trial is to be taken in substitution for the testimony of the witnesses, and that's so now. Nothing that they say is evidence at all.

It is your recollection of what the evidence is at all times that governs. From time to time you may hear objections from counsel, that they believe that the facts are not as stated by counsel in thier summation. All I will say at that time is that it is the jury's recollection that governs. The jury's recollection of the testimony and the facts is what governs at all times. We will first have the summation by the government, then the defendant's attorney may or may not sum up, as I told you before about the obligation of a defendant in a criminal case, he doesn't have to do anything. Following Mr. Berger's summation, however, the government will have a short period of rebuttal summation.

MR. LITTLEFIELD: May it please the Court, Judge Gagliardi, Miss Gray, Madam Forelady of the jury, Mr. Berber, Agent Digricoli: the first thing is to thank you on behalf of the government for the attention you paid during this trial which now is on its fifth day, for your good humor during legal arguments and little conferences and while you file in and out, and for your promptness, especially. Obviously, the system of justice depends on juries being responsible and taking their responsibilities seriously, and you all have certainly done that.

I first want to outline for you what it is -- the various areas that I am joing to deal with in the course of

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this summation. First, I am going to review the indictment 3 so that you will know what the elements are of each of the two charges. I think secondly I am going to review the facts, which means I am goin; through step by step all the exhibits and the testimony in the case -- and what I say, of course, about these exhibits and the testimony is my recollection. What counts is what your recollection is, your understanding of the exhibits. Third, I am going to review for you the test !mony of the defendants, and, of course, that's really the most important part of the case here, for you to decide whether you believed Mr. Goldenberg.

MR. BERGER: Objection, your Honor.

THE COURT: Overruled. This is argument. Proceed.

MR. LITTLEFIELD: Finally, I will review very briefly the elements and point out to you how the government's case fits in to each of those elements and what it is that the government believes it has proven with respect to each of the two counts.

The first thing I want to say right at the beginning so we can get that out of the way is that even if Mr. Goldenberg's testimony about the little chits and giving the money in cash to Mr. Kimis is true, it doesn't mean that it was . 't his money initially before he have it away. So keep that an mind throughout this summation and throughout Mr. Berger's

income to him if it came to him, if it was money coming in to him over which he had control, even for whatever period of time, before he gave it away. That's the point to keep in mind. It is income to him, money coming in, if he has control and if he is the one who can decide what to do with it.

MR. BERGER: Objection, your Honor.

THE COURT: Members of the jury, the law will be explained by me. These are contentions of the parties which you may accept or reject and which may or may not accord with the law as I char e it to you.

MR. LITTLEFIELD: While I have it in mind, let me first just point out what I think the significance you may find of this alteration of one of these chits is. Initially the chit was submitted to the agent at that twelth meeting, Agent Libowitz, here it is, the Xerox copy, only that part of the exhibit, 4/4/69, with the bottom cut off. That's the Xerox. Then subsequently the exhibits are given to Mr. Hyatt in Brooklyn approximately a year later. This time Mr. Goldenberg must have forgotten to cut off, as you can see here, the bottom of the exhibit, and he left on "Final payment in full 90,800 shares." Then the original exhibit which he now presents in court, this little yellow sheet, it is cut off, so again the bottom is not shown. It is hard to tell whether the cutting --

whether this precisely matches the cutting or not, so you can 2 see whether or not this document was cut -- it looks as if 3 it was. In fact, you may find that it was cut after it was 5 Xeroxed, because that would explain why he had a Xerox 6 and he had all of this on it, but he cut it off to submit to 7 the government initially and for ot when he submitted the Xeroxes to the government the second time that he had cut 9 off the bottom here. So final payment in full, 90,800 shares, 10 I don't know what that means, but it certainly doesn't mean 11 anything we have heard anything about, his explanation that it 12 was for a hotel. We never heard anything about 90,800 shares. 13 The only explanation for that can be that Mr. Kimis somehow 14 was involved with Mr. Goldenberg in selling the shares of 15 Mastercraft, the four million shares that were involved. That 16 means that perhaps Mr. Goldenberg gave some of the money he got for selling the shares to Mr. Kimis, final payment in 18 full, 90,800 shares. But it certainly puts the lie, you may 19 find, to the idea that this money was going off for some hotel, 20 because we never heard anything about shares in any hotel. 21 fact, Mr. Goldenberg specifically said there were no shares in the hotel. It was all "our oral agreement." So Mr. Goldenberg has slipped up there by letting that document come through, and 24 you may find that that point-blank shows he changed the docu-

ment so that you would believe this story about the whole

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investment being part of some plan to send money to Nevada for a hotel. No shares were involved in that. Here it says "Final payment in full 90,800 shares." The only shares we know about are the Mastercraft shares. Now the indictment.

I read it to you in the opening. It is the two counts, very simple in that respect. Just let me review the elements.

additional tax due and owing. This tax must be substantial.

It doesn't have to be the whole amount that were the figures this exhibit, by the way, is not in evidence, it is just a
summary of what Mr. Buchbinder testified the tax would be if the
income were \$540,000 more. This is what's charged in the indictment. The jovernment doesn't have to prove those specific
figures. All the government has to prove, as the Court will
charge, is a substantial additional tax due and owing on this
first count. The figures show that with \$540,000 extra income,
the tax would be \$349,517, after the deductions. But, again,
the government doesn't have to prove this. It is just a
substantial amount of tax due and owing. What is substantial
is for you to find in view of all the circumstances in the
case. That's the first element.

Secondly, and this is for count one, the government must show that there was an attempt to evade. As the Court will instruct you, an attempt to evade can be shown by the filing of

the signing and filing of a false return. The third element is that it was willful, this behavior. That means in short that you know what you are doing. You conduct your affairs so as to deceive, to avoid paying tax. It was a willful action by the defendant. Those are the three elements in count one.

There must be some substantial additional tax owing. Remember, he paid no tax, nothing that year. He said when he took all his deductions he had a \$3,244 negative taxable income. No tax. You must find that there was a substantial tax which he didn't pay.

Secondly, that there was an attempt to evade the filing of the return. I think that's conceded, that he signed the return and filed the return.

Third, that what he did was willful, his attempt to avoid these taxes.

The second count, count two, essentially the same, except in that count it deals again with the 1968 tax return. You don't have to find any additional tax owing to the government. The elements are merely that he signed the return, that he signed it and that the return stated that it was being signed under the penalties of perjury, and there is no contradiction to that.

Thirdly, that there was a false statement in the re-

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That means in short that it had an influence on the tax return, it was of some significance, namely the understating of income, and that he did it intentionally. It was willful, again. So the difference between the two counts is the first count, you have to find that he owed some tax. The second count, you don't have to find that he owed additional tax. Now the facts.

Again I am going to use this first chart that I used in my opening, though I think by now -- this is a very simple one -- you don't even need to have that shown to you. Two companies, First Standard and Mastercraft. Mastercraft had the contacts in Japan, you will recall, and the selling organization in the United States. First Standard had some rights to a video tape machine. Goldenberg was one of the principals and stockholders of First Standard, Leeds was the attorney, one of the attorneys, and Dayon was the principal, president, of Mastercraft and Gluskin was the attorney. It was decided that if they combined these two companies they would have the product with the rights, the video tape machine, and they would have the manufacturing potential in Japan and the selling potential in the United States. So they combined. Towards the end of December, 1967, beginning of January, there was a transaction in which First Standard acquired the assets

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of Mastercraft in return for all these shares of stock. The reason they issued all these shares of stock, four million, two hundred thousand, you may find, is because they wanted to free up some of this stock to sell it. They could only free up the stock of the employees, which was a very small percentage, so that's why they had to have so many issued. If they didn't issue so many, they wouldn't have have many to sell, if the only ones they could sell were the ones issued to the employee, which was some ten percent. What happened is they needed to raise money for the new company, so they were goin; to sell the stock. First Goldenberg proposed this rule 133 free up the stock of the employees to sell it. To Leeds, there was a discussion, Goldenberg and Leeds, subsequently Gluskin tells Dayon if they can free the stock to sell, if they can get the S.E.C. to approve it, they will sell the stock, Goldenberg will sell the stock, the money will go to the corporation, because, remember, they had the factor, LF. Dommerich, and the factor needed to get more money so the company would get its letters of credit, and a percentage, Gluskin tells Dayon a percentage will go to Goldenberg for selling the stock. Then what happens is Goldenberg first meets with Gluskin and Leeds and Leeds says that Goldenberg and Gluskin tell Leeds that he is to receive the proceeds.

The initial plan is that Leeds will get all the

proceeds and deal with them. He does for the first few sales. Then Leeds goes to Tucson and he comes back from Tucson, and he is going to move to Tucson because his wife has arthritis, or whatever it is, and so he is going to be out of it. He is not going to be involved in the stock sale any more. Goldenberg tells Leeds that Gluskin will then handle the sales and Leeds gives over to Gluskin and Goldenberg the papers that he has got in connection with the sale of the few shares that had already been sold. So then in March, 1968, is when the facts of this began and the proceeds of the Mastercraft stock promotion start coming into the Gluskin special account.

Introduced into evidence were the documents from the special account of Gluskin at the Chemical Bank. The most significant of those documents are, of course, these checks which are paid over according to this chart, which is in evidence. This is the summary of the checks paid from the Gluskin special account to Superior Plans, the Gluskin special account collecting the proceeds. You can see that more than nalf of these funds, \$470,000 go into Central State Bank, Superior Plans account, and \$70,000 into the Chelses National Bank. Subsequently Mr. Goldenberg takes \$68,000 out of this account and puts it in that account, which shows why eventually he is able to withdraw more than \$70,000 from the Chelses account.

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They begin to sell stock and the money comes in to the Gluskin special account. From the Gluskin special account \$540,000 goes to Superior Plans. Mr. Dayon testified that a substantial amount of the stock also -- of the proceeds also went for the company, about over \$400,000 went to pay for the company. How does Goldenberg get ready to receive these funds that he is to et through this route from the Gluskin special account? He gets Leeds, his lawyer, that he paid a \$1,000 a month retainer, to prepare the papers for the filing of the certificate of incorporation of Superior Plans. Goldenbe ; is to be the president, Leeds the secretary. It says on the certificate of incorporation that 200 shares of stock are to be issued. Leeds says that Goldenberg is to be the sole shareholder, the complete owner. The address for the corporation, if there is any doubt as to whether Goldenberg is in charge, is 301 East 48th Street, which as we know is his -- where he has apparent three duplex apartments or one duplex and two other apartments, 200, B and A and 194, B and C, or somethin; like that. That's the certificate of incorporation. Leeds draws it up and it is filed on March 12, 1968. Apparently it was signed on March 7th. In fact they are already doing business starting March 8th when they open the account at Central State, four days before the filing is even completed. You, of course, will be able to look at any of these exhibits in the jury room, but I

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am going to go through them now in summary form. Meanwhile, Goldenberg, as they are getting ready the corporation, Goldenberg is prepared to open the first bank account at the Central State Bank. He brings a corporate resolution to Leeds. Leeds signs it, he designs it, Goldenberg, on March 1, 1968. Leeds signs it on the 8th. Already on March 1st you can see that Goldenber; has his plan ready. Superior Plans is going to be ready to get the money from Gluskin when it comes into the account, boom, so we have the corporate banking resolution filed and the account opened. We have the signature cards here. The account is opened March 8, 1968. Exhibit 1, Xerox of the signature card. Who is the only person who can sign checks on this account? Bernard L. Goldenterg. Address? 301 East 48th Street, again, his apartment. So we have the account opened on March 8th. Now Goldenber; is almost ready to receive the fund from Gluskin. There is one other point about opening the account. Notice what he does, he puts down, here is the history sheet -- of course, the business that Mr. Goldenberg is talkin; about for Superior Plans, it says here acquisition of advertising agencies. That's what he testified. The purpose of Superior Plans was acquisition of advertising agencies. You may find that that's just baloney. If the first thing they did when they started was to rush this money through, which we now hear was for this hotel in Nevada,

what does that have to do with advertising agencies? He didn't want the world to know about the hotel. Advertising agencies. Whatever happened? We never hear anything more about acquiring of advertising agencies. That's a sham. That's part of the whole sham that this corporation is. Before I forget, on the Central State Bank, remember Mr. Goldenberg and his testimony, was Mr. Gluskin the attorney for Superior Plans? He says no. Here he writes a letter to the Central State Bank saying, "It is all right for you to cash these checks made out by John Gluskin, attorney to Superior Plans, Inc." Mr. Gluskin just uses people's names whenever he wants to. Attorney.

Then Seymour Svirsky, vice president of Superior

Plans. We never heard from Mr. Goldenberg what Svirsky had

to do with Superior Plans. We heard from Svirksy that he never
heard anything about Superior Plans. Mr. Goldenberg is using
people's names. So now we have the account opened, we have
the money coming into the Gluskin account. But, there is one
more thing to do, because Gluskin is not going to pay over
to Goldenberg all this money unless he has some cover, something
to make it look legitimate. So what do they do? They decide,
Goldenberg talks to Leeds and they decide to come up with this
debenture idea because Gluskin wants to have something in his file
so when he is paying off the money owed to Goldenberg because

they come up with this idea of the debentures. Let's just look at what the debentures are. Leeds again drafts them because he is right there at \$1,000 a month to do whatever is necessary for Goldenberg's legal requirements. We have 25 of these debentures. A couple of interesting things about the debentures. First of all, they start with number two. You may find the reason for that is that the whole issue was going to be 50 of them, if all of them were issued, though we know only up to number 26 was ever issued, that they were going to get in return, if they wanted to exercise a right of conversion, which means Gluskin is giving money to Superior Plans.

That means that you are entitled to \$10,000 from us when this debenture date is due, plus interest." What happens to this debenture? It says down on the bottom, "But you can decide to trade in the debenture for a share of stock at any time." That would mean that Gluskin would not have the debenture, he would have a share of stock in Superior Plans, which we know is not terribly worthwhile. So he has -- what Goldenberg insists is that Gluskin exercise that right of conversion with an undated letter. In other words, you write me a letter, says Goldenberg to Gluskin, saying that you hereby

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elect to transfer your debenture into a share of stock, but don't date it. That means I can date it whenever I want, and if you try to come and collect on one of these debentures, I can say no, no, no, I have this little converted thing, this little convertible letter. That means all you get is a share of stock. Here is my share of stock in Superior Plans, As we all know, a share of stock in Superior Plans is about worth -- that's now much people think it is worth. No one even bothers to take their shares of stock in Superior Plans. Look at it. There is not a note in here that any stock was ever issued. There is one certificate missing, but there is nothing in here that it was ever issued to anybody, number 20. That's how much people think about Superior Plans stock. They don't give a darn about trying to get any stock in that company. So what does Gluskin get? He has the debentures, but the debentures are worthless because Goldenberg has this letter that says the debentures are no longer in effect. Now you have got stock. One share of stock. The reason the debentures start with number two, you may find, is even Goldenber wants to make sure that two through 50 is only 49, make sure no one is going to get 51 percent, just in case. Goldenberg wants to be in control of Superior Plans, because, remember, he has this idea that he is going to use Superior Plans to send the money out. So he wants to make sure that he is not

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going to have any more than 49 percent in somebody else's control.

So that's the debentures. You may find the debentures are utterly worthless because of this letter to convert.

They don't mean anything. They are a cover for Gluskin. He

has the debentures in his file.

The other thing Gluskin wants is a letter from Leeds saying that this already -- you know, he has got to have something in his file that shows that this corporation means something, so he asks Leeds for a letter and Goldenberg and Leeds draft this letter which says essentially that, "As I discussed with you, Goldenberg is going to organize a corporation. The purpose of organizing the corporation is to acquire existing advertising agencies."

He is going to invest 200,000 shares of Mastercraft stock in exchange for the issuance to him of 50 shares of Superior Plans stock. No Superior Plans stock was ever issued to Mr. Goldenberg.

"As you know, Mr. Goldenberg is an enterprising person and he has a great deal of confidence in this project. The corporation is going to have available corporate debenture bonds for investment and I think they will afford you a worth-while opportunity. They will be sold in units of 10,000 each and will mature in two years." We know the debentures end up being worthless because of this conversion for stock.

and his letter. They are all ready to start the funds going through Bernard L. Goldenberg. The first day, what happens to the Central State Bank account? The very first day, you look at the deposit slips, \$30,000 deposited in the Central State Bank on the very first day. 5,000 of that, if we look at the deposit slip here, March 8th, you will see it here, this is a notice that the deposit slip is not printed yet because the account is just opened. Superior Plans, 8 March, ca., \$5,000, check \$25,000. Deposited by Goldenberg in the Central State bank account from Gluskin, here is the Gluskin check, \$25,000. As a matter of fact, here is a little endorsement here, for deposit, Superior Plans, but it says Central State Bank, stamp of deposit for Central State Bank. The very first day we have \$30,000.

Again I guess this chart is useful, \$25,000 check from Gluskin plus \$5,000 cash. This is Goldenberg, by the way, the man who reports a negative taxable income for the year '68, \$5,000 cash, we don't know where that came from, but that gets put into the Central State bank account for Superior Plans as well.

Then what happens? That very day check number 600, and this is the check here, made out to cash, \$25,000. Who is the only signer on this account? Bernard L. Goldenberg. Who

endorses it? Bernard L. Goldenberg. \$25,000 cash. The very first day, Superior Plans is set up for advertising agencies, he says, and he says from the stand, you may find that is just not true, because, what do they do the first day, in comes the money and out it goes to Goldenberg, cash, part of the beginning of this whole conduct had amounts of money through Superior Plans out to Goldenberg. But this money that comes in and goes out has nothing to do with advertising a encies. According to Goldenberg now it is for Nevada. You may find that for Nevada is a lot of hot air because what do we know about the truth, where the truth slipped through is ir had something to do with the shares, which confirms that what Gluskin told Dayon, that Goldenberg was getting the money through this scheme to pay for the stock that he had sold. The first day, \$25,000 cash comes out.

We follow the next three deposits. Next deposit on March 12th, check from Gluskin dated March 11th, deposited March 12th -- the bank statement shows the deposit. There is no deposit slip for March 12th. Apparently they couldn't find the deposit slip but the bank statement has a deposit of \$45,000 on March 12, '68. I believe if you look at the back of the Gluskin check, \$45,000, March 11th, Bernard L. Goldenberg, for deposit only, Bernard L. Goldenberg, Superior Plans, there is the Central State bank deposit stamp.

Then what happens? Goldenberg withdraws March 12th, cash, here is the little check, this is a microfilm copy of the check, endorsed by Bernard L. Goldenberg, signed by Bernard L. Goldenberg, \$40,000 cash. By the end of March, according to the bank statement and the checks which we have, by the end of March -- by the way, the next deposit is a \$60,000 check written on March 15th, and that's deposited on March 16th, according to the bank statement, and again the cash goes out. We can see by looking at the next check that there was \$5,000 -- on March 14th there was a check for \$5,000, check 104, which was made out to cash by Goldenberg, and the rest of the money withdrawn that day was withdrawn through this method of cashing bank checks. Let me get you the exact check on that.

March 14th. March 14th, \$5,000 is cashed, check 104. On March 14th there is also a \$20,000 withdrawal on that same day. If I can find out how he got that out, I don't believe he started the official checks until March 21st. I can't offhand tell you how he got out that third \$20,000. Maybe Mr. Digricoli can find it for me. In any event, by the end of March, looking at the overall statement, we have within three weeks \$200,000 deposited, up to here, 25 and 45 is 70, 130, 160, \$200,000, and withdrawn within the first three weeks a total of \$187,000, according to the bank statement.

2 So the money goes in and comes right out to Goldenber: The 3 first three checks that went in, at least the 25, 45 and five 4 of the next one, were cashed at the bank. But then something 5 happened. From then on Goldenberg cashes all the checks 6 through the check casher. He writes out a Superior Plans 7 check payable to himself, takes it to the bank, the bank 8 then issues bank checks payable to Bernard L. Goldenberg, and 9 he then joes to the check casher. The check casher, as we 10 know, used to purchase official bank checks payable to Golden-11 berg which were then cashed with a check casher, \$251,000. 12 Why doesn't he keep getting the checks cashed at the bank? 13 Remember Mr. Berger asked the people from the Chelsea Bank did 14 they have cash, and she said yes. We know they had cash at the 15 Central State Bank because the first two or three checks were 16 cashed at the Central State Bank. No. He has this new scheme 17 where he is coing to go over to the check casher around the 18 corner and pay one percent. There must be some reason you are 19 going to pay one percent to get your checks cashed. It 20 doesn't cost you anything to get your checks cashed at the

The Court has taken judicial notice of the regulation, which is in essence, 102.1, banks are required to report to the Department of Treasury transactions, A, "Transactions involving \$2,500 or more of United States currency in denomina-

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tions of \$100 or higher, and, B, transactions involving \$10,000 or more of United States currency in any denominations."

whether Goldenber knew what he was doing, as to whether this was an effort to conceal, this regulation shows that the reason he had to go to the check casher was because if he stayed at the bank and they give him cash for these checks, they would have to report it to the Department of Treasury. So he is willing to pay the one percent and let the checks cashed by the check casher, so long as they don't report it to treasury. The check casher doesn't have to report to treasury.

Now we have it. March 14th, there is a \$20,000 check, check number 103. Here is 103, \$20,000, March 14th.

Bernard L. Goldenberg, \$20,000, payable to Bernard L. Goldenberg, used to purchase five \$4,000 official bank checks.

These official bank checks are payable to Bernard L. Goldenberg, endorsed by Bernard L. Goldenberg, and then there is another endorsement of a Don Moen underneath. Again Bernard L. Goldenberg, Bernard L. Goldenberg, Don Moen and Bernard L. Goldenberg, Bernard L. Goldenberg is just doing with this money what he wants. Endorsing it and then it is counterendorsed by Don Moen. By the end of May when the next batch of deposits come in, there is 140,000 more deposited in the account. 93,000 goes out. In June 90,000 goes in and 114,000

and he has moved on -- the money is now coming out of the Chelsea National Bank, which we will get to in a moment. Meanwhile, once this whole operation has been set up, Leeds has moved to Tucson, taking the corporate books with him. We can see again what kind of a corporation Superior Plans was by the fact that when Leeds called Goldenberg in May to tell him he had the corporate records and said, "Do you want them?" Goldenberg said, "Don't bother. I don't need them."

He never asked for them again from Mr. Leeds. The corporation is a sham. Goldenberg doesn't even want the records. However, for some reason, we lon't know what it is, Goldenberg needs another bank account. He wants another bank account in June. So he prepares the corporate papers by himself for the Chelsea National Bank and these corporate papers, corporate resolution of Superior Plans, "I as secretary of Superior Plans," and you can see this is in Goldenberg's handwriting, here is Philip Leeds, again in Bernard L. Goldenberg's handwriting, secretary-treasurer, the corporate resolution, filed with the bank, dated June 5, 1968, and Leeds says that he did not sign this, it looks like his signature, but there is no middle initial and Goldenberg never asked him to open a new bank account. So again we have Goldenberg just going ahead and doing willy-nilly whatever he wants. Whose account is this?

2 Superior Plans Inc. This is the signature card. Bernard L. 3 Goldenberg, the only si nature, the only person who is going to have control of that account. What's the address? 301 East 48th Street, duplex 19D. This is the Chelsea account. If Goldenberg was serious about Superior Plans, as Berger pointed 7 out when he was questioning one of the witnesses, he could have 8 replaced Leeds. He didn't have to have him as secretary. Anybody could have been a secretary. It didn't bother. It 10 dcesn't matter. This corporation is not going to do anything, so who cares. So he doesn't bother to replace Leeds. In 12 fact he writes down, "I, as secretary, I, Bernard L. Goldenberg. 13 as secretary," and so it goes. On June 14th his account is 14 opened and the deposits go through the Chelsea account, the 15 first check is this \$20,000 check, then the \$30,000 and a \$10,000, and that is in June, June 10th, here it is, \$20,000, 17 Superior Plans, H. John Gluskin, for deposit only, Superior Plans, Inc., Bernard L. Goldenberg. Notice it says two debenture bonds up here. They are still getting a cover for Gluskin on the debenture bonds. Down here, Chelsea National Bank. 21 So they begin depositing these checks now in Chelsea. 22 Again, just to show you, remeber when Goldenberg was asked 23 about -- he was asked by IRS in the interviews they had with him whether he recognized the handwriting and he said no, he told themno at that point. He didn't even want to admit any

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SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE

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connection with these. On the back he said he didn't recognize the handwriting on some of the backs of these. Now in Court, remember later when he was on the stand this time, he admits he does recognize some of the handwriting on the back, and that typewriter, remember the two typewriters of Superior Plans, he recognized one of the typewriters. Now he has his second bank account working. What happened on that account, looking at the bank statements, and we have the deposit slips here, too, so you can follow the deposits, June 10th, \$10,000, that must be the checks of June 7th, and June 11th, \$20,000 check or \$20,000 deposited. If that doesn't appear as a check here, since the check is not written until 6/14, this must be one of the bank transfers from Central State Bank where \$68,000 was transferred over. On June 14th there is a deposit of \$20,000 which is probably that check there that I showed which has the endorsement on it, the stamp of the Chelsea Bank.

Now by reviewing the bank statements of Chelsea, by the end of August, \$106,000 has been in and out of that account. Again, what't the disposition of the Chelsea money? \$106,000 in and out through Lazarus. Again, why did he go to Lazarus to pay the one percent if it wasn't that he wanted to avoid having to give to the government -- the bank having to report to the government that he was taking the money out directly in cash. Directly cashed by Goldenberg, \$12,000, then cash

balance when he bought bank checks totalling \$4,000. So we 2 3 have the two accounts working, we have the money funneling through. The total amount of money that comes out at the end 5 of Superior Plans, \$55,035.51, right down here, this figure here, is the total. Meanwhile at least during May Dayon 7 has been in Japan, he gets back and he finds out that they haven't been able to get an accounting, the employees, from 9 Gluskin as to what is happening to all this money. Gluskin 10 tells him that a substantial amount of money has been paid to 11 the factor for the corporation, about \$400,000, and there is 12 arguments, Gluskin also says that not only is the factor 13 metting his money, but Goldenberg is getting his share, and 14 you know that because we know that is true because we have 15 seen the money being paid out. So Gluskin wasn't telling Dayon 16 anything false at that time. We have seen it from the docu-17 ments, that the money was paid from the Gluskin special account 18 to Superior Plans and taken out by Goldenberg. Finally the 19 S.E.C. comes in to this thing, Dayon hires lawyers, they try to 20 get an accounting, there is some sort of an accounting, Golden-21 berg indicates he might get the money back. He never does. 22 There is no repayment. No interest on the debentures, no six 23 percent, no nothing. The money out through Goldenberg. 24 Goldenberg does what he does with it. To that point the facts 25 are essentially undisputed, as Mr. Berger has stipulated, that

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this whole chart is correct. This money went from the Gluskin special account, as we know from this chart, through Superior Plans to Bernard L. Goldenberg. There is no dispute that those facts, everything I said so far, is essentially undisputed. The money went out to Bernard L. Goldenberg. Now where are we? On April 15, 1969, Mr. Goldenberg files his federal tax return, uses the federal tax service as the tax preparer, Mr. Goldenberg also files returns showing a number of the corporate accounts. Here is Goldenberg's '68 tax return, negative taxable income of \$3,224, you have seen this, but you can see it again. 1968 tax return. Also prepared are certain Superior Plans tax returns. The Superior tax return for the year 1968 is in evidence. You just look at that, if you have any question as to whether Superior Plans had any sort of business at all. Balance sheet, absolutely empty. Not a note. Not a list. Not an asset. Not a loss. Loans to stockholders, nothing. Investments, nothing. What happens? That's 168. Look at 169 to see if Superior Plans is doing any better by 1969. Balance sheet. Empty. Nothing. No loans, no investments, no nothing. '70, how are they doing? This isn't just money loss. This is no activity. Nothing in the corporation. No mention of investments with Nevada, no mention of loans to anybody, no mention of debentures being outstanding. If the debentures were due in '70, any income? Nothing. Empty

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again. This is on the assets balance sheet.

Then we get up to '71 and Government's Exhibit 8H shows that for '71 there was no tax return. '72, no tax return. '73, no tax return. Just so you understand this, it has no record of filing, form 1120 for Superior Plans, 7203, 7303 and 7403. 7203 refers to the tax year for '71. 7203 refers to '71, 7307 refers to '72. 7403 refers to '73. Exhibit 8A, no record of filing for '74, which is 7503.

On the face of the company's own documents filed with the government, there was no activity. This was no investment by the company, according to their own records. Now begins Mr. Goldenberg's charade with the IRS, appointments missed. It is really, you may find, brazen disregard for his obligations. For instance, the first meeting, he gets a letter. He doesn't show up at the first meeting. He claims it wert to some other Goldenberg at the building. That might be, except it is typical the way he avoided meetings. Even with Mr. Hyatt apparently he didn't show up for two meetings that were scheduled. This disregard he has for his obligations continues. What about the \$4,000 fine when he was convicted of perjury. He had a \$4,000 fine in 1971. Unpaid even to date. What about his failure -- he was advised he had to appear in this court for an arraignment, having been indicted. He fails to appear. He just does not show. Then we find he is

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Bernard L. Goldenberg, this is his regard for lawful authority and what his obligations are. Between July, 1972, and January, 1973, there are at least twelve meetings with the IRS. The IRS is giving him a chance to explain. They get false statements, double talk and evasion. At the first meeting he gets a subpoena for the records of Superior Plans. What do we jet?

Next meeting, he can't carry the briefcase. Remember that one when he was on the witness stand? He can't carry the briefcase, even. That's his excuse for not bringing records.

Not until January, 1973, eight months later, for the first time does he come up with these little slips of paper which we find now he has doctored.

All right?

Want some water?

THE COURT: If any juror has a problem, bring it to my attention.

MR. LITTLEFIELD: So we don't get these receipts, as I said, until the twelfth meeting. What do we get also at the twelfth meeting but the Superior Plans minutes. Finally we have minutes of Superior Plans showing it is an ongoing real corporation, and we will get to them in a minute. All throughout this time, he says all throughout these interviews that he

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it to him. You heard Agent Libowitz with his recollection refreshed by looking at the memos he made from those conferences with Goldenberg where he said over and over, Goldenberg did,
I borrowed the money from Superior Plans. Now he gets on the stand and he says, "I never told anyone I borrowed the money.

I am investing it. The corporation is investing it."

He changed his tune completely then because if he borrowed it without an intention to pay it back, and his own mouth says there was no intention to pay it back, then it is income. Then it is money You can't camouflage something in terms of a loan from a corporation if you don't have any intention to pay it back, and you can't just camouflage that that way and call it a loan when, in fact, it is money that you get access to that is within your control, you do with it what you want. Those minutes. The minutes for the corporation, Superior Plans, February 2, 1969. I read these and we handed them around. It talks about discussion with Philip Leeds about the investment, Superior Plans, Arnold Kimis, et cetera. You may find that these are the most self-serving documents you have ever seen. It took him twelve meetings to produce them. finally produces his own little typewriting, signed only by him, Bernard L. Goldenberg, president. The next one, March 8th. This one is signed by Goldenberg. This is the meeting which he

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had with himself and which he then said he talked to people on the phone but he couldn't tell you who he talked to on the phone.

Discussions were held in detail over the phone with all parties as to who actually the investors were in Superior Plans. Now his story has changed. Remember at this time when he was filing these it was a borrow, he was borrowing the money from Superior Plans. He hadn't sort of figured out that it was going to be Gluskin investing. So he is hemming on that. He doesn't even say it was Gluskin investing in Superior Plans at this time. It is who are the investors? He decided to consult outside legal service, not Philip Leeds, based upon legal opinion it would then be decided what action should be taken. You may find that these minutes are fabricated documents turned in to the IRS which show that he knew in his mind exactly what he was doing. Again, another one of its stories to the IRS. Mr. Libowitz told you that when he was first asked, Goldenberg said he had no recollection of giving Gluskin any documents relating to the \$530,000. He wouldn't admit, he didn't even pay enough attention to the debentures to even mention them to the IRS. He wanted to hide that. If he didn't, they were so meaningless he didn't even consider them as anything he had given to Gluskin, any documents relating to the \$530,000. Throughout the IRS, twelve meetings before

mony from the witness stand.

he produces any of the chits, the whole story about borrowing when he suddenly gets on the witness stand and with Hyatt in Brooklyn, the evasion, the double-talk, I will have the documents tomorrow but they are in my trunk, I will have the documents tomorrow but I can't carry them because I have kidney disease, this whole thing you may use to show just what his state of mind was. Just the fact that he knew that he was avoiding what his responsibilities were to pay tax. Let's look at his testi-

That's what your test is, as jurors, to analyze the credibility of witnesses. Compare his manner on the stand with, for instance, that of Mr. Libowitz. Does he, Goldenberg, seem to be concise, is he careful about his answers? You may find that that whole day, approximately a day on direct and cross examination, just filled with evasion, self-serving explanations, contradictions between what he told the IRS the first time and what he is saying now, contradictions between himself, what he said at the beginning of his testimony and what he said later, it is just all one great big mishmash, and that is your test, to decide whether Bernard L. Goldenberg is telling the truth. If you find he is not, that goes to his state of mind. Why else would he have to get up on the witness stand and hide unless he knew what he was doing? When you are considering his credibility, you may consider the fact that he

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has already been convicted by a jury once of perjury, lying under oath before a grand jury and the S.E.C.

The government submits that you may find his testimony utterly unreliable. The Court will charge you on witnesses and what you may do with witness' testimony if you find it to be unreliable.

I have already spoken about how he showed his utter disregard for the system of laws; his evasion to the IRS, the nonpayment of the \$4,000 fine, failure to appear here when required to appear, false names. Let's just look at some of the aspects of his testimony, and just a few of them which I think will show up what I am talking about.

The shorthand book and the records. Remember that whole little explanation, couldn't remember this, couldn't remember that, he had his shorthand book here, shorthand book here, it was stolen in the armed burglary. When is the armed burglary? '68 or '69. Could it have been '70? Maybe. Yes, ro. Finally, "No, I doubt it." Just never would answer specifically, never would answer precisely. Then the little inconsistencies in himself. First he was asked who owned stock in Superior P. Ins. He said, "I, Bernard L. Goldenberg." Though we see from the record book that no stock was ever issued to anybody.

Then he told the IRS it wasn't him, but that he owned it through a corporation, Procedures, Inc., or something.

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It is just a total confusion. Total inconsistency, total contradiction. I have already pointed out how he admitted on the stand that Gluskin wrote the checks, but to the IRS he didn't recognize them, he didn't recognize Gluskin's handwriting when shown checks by the IRS. What about some of the implausibility? In deciding whether a witness is truthful or not, you can consider whether what he says is plausible, could it have been. If it were a legitimate transaction, if Goldenberg were a legitimate businessman, not trying to cover up, not trying to conceal, with his accountin; and ousiness background, remember how he told the IRS it was University of Miami, the Far East, Hofstra, Business Institute, NYU, and he had even registered but didn't attend Adelphi Institute, this also goes to what he knows, all this business background, studied contracts, with all that knowledge, if he were a legitimate businessman, don't you think there would have been a document, a record, a contract, a note? No. All we have are these little chits. He had lawyers available. He had Leeds, he had Gluskin. Gluskin, you recall, was quite insistent as far as at least getting the money from here to here, that he have documents to make it look good. But out the other end, if Gluskin in fact were involved in payments according to Goldenberg to Kimis, don't you think he would have required some sort of better documents than those little chits? Notice how careful he had been to get

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the documents, the debentures and the covering letter, to get the money back and forth here. So you may find that the fact that he wasn't supports the whole reason this money went through, which was from the proceeds of the stock promotion out to Goldenberg.

Gluskin didn't care what appened to it after it got to Superior Plans. He wanted to make sure that he had cover for Superior Plans. But after that it was to Goldenberg. Goldenberg gets it in cash. Goldenberg hands it out to Kimis and these other people, according to Goldenberg. Don't you think if Goldenberg were serious that this was an investment of the company that the company would have tried to get the money back, made some -- followed up somehow to get the money back? Especially, remember he said that the money was for a gambling license and had something to do with the hotel, he said he learned four months, still in 1968, after he had given the money that the hotel wasn't going to be built. If the hotel wasn't going to be built, you don't need the money for a gambling license for a hotel that's not going to be built. Does he go try to get the money back for the gambling license which he said was going to go to some lawyer to get the gambling license? No, he doesn't even try to get the money back for the cambling license. That again shows that he doesn't expect to get the money back. This is his own deal,

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his own thing, going out for whatever purposes he wants to do with it. I have already talked about the names. Is this the sign of a legitimate businessman who after he gets a form to report for arraignment, that a warrant will be issued if he doesn't, starts using these names, Bernard L. Moran, Bernard Cohen, Bernard Simmons, you can recognize this signature, the Bernard -- he said he used these names and recognized these documents, there is the Bernard, it is just like his signature for bernard L. Goldenberg. This time it is Bernard Simmons. The kind of person who does that, is that the kind of person you are going to believe from the witness stand?

payments to various people included money to his chauffeur
Benigno. How can that be anything but money used by Goldenberg
for his own purpose. He had control of that money and he used
it for his own purpose, to pay his chauffeur. He had stock
purchased for himself, this is the woman who came, to buy
shares of Allograph. He admits from the witness stand that
some of this money, he has control over it to pay his own
chauffeur and to buy his own stock. Then what else did he
give to the IRS but Government's Exhibit 46A.

This is the breakdown of the money. Here also he admitted taking -- it says "cash received" -- this is one of the documents he drew up to hand to the IRS, along with the

minutes. Cash receipts, \$566,450. Cash disbursements. Cash, notice he doesn't say where, just cash, \$429,537. Bernard Goldenberg, \$46,457.91. So that on his own record, cash to Goldenberg, then Superior Plans, Inc., cash disbursements to Superior Plans, Inc., \$74,000. From his own records, what he has given the IRS, he has shown, he has admitted, essentially, you may find, that he got money which he didn't report on his tax return. So that in his own record -- remember the government must prove a substantial due and owing -- from his own record he has admitted that he didn't report \$46,457.91 which went to Bernard Goldenberg. He doesn't say what happened to the cash, the \$429,000. So here is the document that he turns over which on itself is an admission that he has not reported all that he should report.

What you have got to look at is first, the first element, was this money income to him. Did he receive it, was it money coming to him, did he receive it and did he control what happened to it. Don't look at the formalities, don't look at the smoke that's thrown up around what actually occurred. Just look at the facts. Superior Plans to Bernard L. Goldenberg, which he went out and cashed. He had control of that money. He had that cash.

Let's look at one point about that. Remember he testified that these people would go into the check casher with

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him, and, in fact -- I will read you page 58 of his testimony. The question was how he would go about getting these little chits. He would go to Mr. Lazarus, the check casher, around the corner from the Central State Bank and get the cash from him. Answer from the witness:

"Yes, with one of these people, most of the time.

"(. One of these people being whom?

"A Eriss .Mr. Feinberg or Mr. Kimis himself.

"Q Or Mr. Benigno?

"A No.

"Q Never Mr. Benigno?

"He might have been with me on an appointment.

But I never gave him the money.

"Q He was the driver for you?

"A A driver? He has driven me, yes."

He wouldn't admit it.

"Q Then what would happen, you would take the money in cash?

"A Yes.

"Q What would you do next?

"A I would count it out and Mr. Kimis or Mr.

Eriss or Mr. Feinberg, whoever was the recipient, would count it also and then they would give me their signature, their initial."

of this crime, willfulness.

Remember, this was in Lazarus. Remember what these receipts say. Let's look at this first little one here. Any of these, 3/19, \$20,000. That's the whole amount of the cashier's check. What about the one percent? They count out the money and then they would initial the little chits. But the little chits initialed are for the whole amount. Did Goldenberg carry around in his pocket, on the \$20,000, \$200 to fill in the amount he had to pay Lazarus? Or did he pay him independently? There was never an explanation for that by Mr. Goldenberg. We never heard anything like that from him. No. It was \$20,000. They counted it out. It couldn't have been \$20,000 because one percent had to go to Lazarus. Then as for the third element

because it is not the place of the criminal laws to penalize frank difference of opinion or innocent errors made despite the exercise of reasonable care. So you have to look. There is no science that can tell you what's going on inside a person's head. You have to look at all the actions they take and all the thin; s going on around them. You must use your common sense. Just look at the actions. Are they the actions of an honest man, a legitimate businessman, conductin; himself without an intention to deceive? Superior Plans bein; drawn up, doing nothing, he said it was drawn up to acquire advertising agencies.

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Nobody ever did that, as far as we know. Papers were drawn up one day and the money deposited the next and taken out right away. Debentures, the worthless debentures were the conversion. Money comes out immediately, using cash. Remember the reason he used cash, you can find, is because of the regulations that -- why he went to Lazarus, because the regulations that if he didn't go to Lazarus, if he got the cash at the bank, the bank would have to report.it.

Let Mr. Berger explain about why he went to Lazarus to pay the one percent, unless it was to avoid having reports msie. That goes right to his state of mind. You may find that shows that he knew that he was avoiding letting the government know about this. Then again, there were no records in the corporation of Goldenberg taking it out. If this were a legitimate transaction, there certainly would have been records. There was no contract, no note, no records, no nothing, as far as Goldenberg getting the money. Then on top of that we have all of his changing stories, the evasion, the ten meetings without giving the chits, then finally giving the chits, and most persuasively and most clearly we have him doctoring these chits, half a chit, but he slipped up and on one of the occasions he forget to cut it off, final payment in full, 90,800 shares. The only shares we know about are Mastercraft stock promotion. So what that has to do, it has to confirm what the government

contends, that this money went through Goldenberg to deal with the shares of stock of Mastercraft and had nothing to co from this end with Nevada, except that maybe Goldenberg for his own purposes had his own reasons to give the money out to Nevada. As I said at the beginning, whether he gave the money to Nevada or not doesn't matter. The question is did he have control over it or was it a legitimate investment by the corporation in Nevada.

I have completed the four sections of the summation, the introduction with the indictment, the facts, the analysis of Goldenberg's testimony and analyzing these two elements, whether the money was income, did it come in to him with his control, and did he know what he was doing, was it willful.

It is now Mr. Berger's turn, and then I will have finally a turn to address you on rebuttal after Mr. Berger has completed his summation. Thank you for your attention during the course of my summation.

THE COURT: We will take a ten-minute recess and see where we go from there.

(Jury not present)

MR. BERGER: May it please the Court, I expect my summation to be between 45 minutes and an hour, at the most. I would not want to see the jury going out to lunch after my summation and then having the government come back and rebut

after lunch.

THE COURT: First of all, they are not going out to lunch. The lunch is being brought in to them. It is due here any minute. The chances are if we get word it is going to be here in the next five or ten or fifteen sinutes, we will send in the lunch and have the summations.

(Luncheon Recess)

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AFTERNOON SESSION

2:00 p.m.

(In open court - jury present)

THE COURT: Just to keep you informed as to where we stand, I have some reservations as to whether I am going to charge you today. I anticipate, it is now two o'clock, we may be another hour, hour and fifteen minutes or an hour and a half with the balance of the summations. My charge is going to take pretty close to 50 minutes, or so. I don't see much sense in sending this case to you to deliberate at five or 5:30 this afternoon. I don't see much sense to that. I think it might make more sense to finish the summations today and then I will charge you the first thing in the morning. That's subject to change in the event of a sudden development, but right now that's the way it looks to me and I thought I would just let you know how I thought. That shouldn't give counsel the excuse to extend the time that they otherwise were going to use in summation.

MR. BERGER: May it please the Court, Judge Gagliardi, Mr. Littlefield, ladies and gentlemen of the jury:

I'd first like to take this opportunity to thank you on my behalf and on behalf of Mr. Bernard Goldenberg, the deferdant, for the service you have rendered acting as jurors in this case. It is only appropriate that in this, our bicentennial

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year, that perhaps we should look into how it came about that you are sitting as jurors. You have always heard the function of a jury is jury duty. I think perhaps you should ask yourself is it a duty, is it a jury duty. Maybe it is something else. Years ago, back in the twelfth and thirteenth centuries, there no right to trial by jury to England, and our law basically comes from the English law, and in the 1100's, King Henry I of Logland centralized the court systems. When he did this the court systems in England worked fairly well. It was a good system, and our system came from that. As long as there was a benevolent king and a good king, the system worked very well. After King Henry, we had King Richard, Richard the Lionhearted. A very fine, good, benevolent king. The year 1200, in the 1200's, King John ascended the throne of England. King John was a -- well, he was not a benevolent king. In those days the power of the king did not come from the people. came from God. Therefore, the people had no rights that were defined. In other words, the only rights they had were those that the king in his sole discretion determined he would give the people. In the year 1213, the barons in England and the free people in England, the free men, as they were called, wanted rights, defined rights, to know what they were entitled to, not something that the king said they were entitled to because he obtained his rights from God and could give them what he

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wanted. So in the year 1213 they had a counsel of barons, and 2 this counsel of barons wrote up a list of demands of what they 3 wanted the king to give them as rights. King John refused to 5 sign that list of demands, and they tried again, and finally in the year 1215 after two attempts the barons and the church-7 men and the free men got together and they raised an army. Their army faced King John's army, and they were demanding that the king sign these rights in to law. When the king saw the army 10 that was raised by the barons and the churchmen, he finally 11 gave in and he signed this list of rights, these demands that 12 were presented to him. There were 63 demands. One of the de-13 mands was the right to a trial by jury. Those 63 demands are 14 known today as the Magna Carter, and it is the Magna Carter 15 which for the first time took away the absolute authority of 16 the king in England and ga specific rights to the free men, 17 and the right to trial by jury was fundamental, a cornerstone 18 of democracy, as we know it today, as is the presumption of 19 innocence and the burden upon the government to prove guilt 20 beyond a reasonable doubt. Those things are the foundation of our judicial system. Although we are in our bicentennial year, you can see that our heritage goes back many hundreds of years. You are sitting here today because of something that 24 happened in the year 1215, and you are sitting here today as a matter of right. It is not a duty, it is your right to sit

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as jurors, and it is Mr. Goldenberg's right to have you sitting as jurors. The only one that can waive that right is Mr. Goldenberg, no one else. It is funny that something that we call a duty is really a right, it is not just an obligation, it is a right. It is only in a free society that people will take a right, which is in effect also an obligation, take such an onerous right upon themselves and demand that right, nearly go to war to get that right, and that right is one to judge a fellow human being. That is the most onerous right anyone can take upon themselves, to judge another.

So this is a very important day in your life, because you are going to be asked to judge another fellow human being. This is probably the most important day in the life of Bernard Goldenberg. You heard about the presumption of innocence. That presumption of innocence is something that every defendant has at the beginning of a trial, criminal trial, and throughout every stage of that criminal trial, even into the jury room. It follows him into the jury room. It is a cloak of innocence. That cloak of innocence by itself is sufficient to protect the defendant. The defendant need not come forward and prove his innocence. He need not take the witness stand, he need not present any evidence, he need not present any witnesses. The cloak of innocence, the presumption of innocence. That presumption, like the right to a trial by jury, is not a legal

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fiction, it is a living thing. It goes to the heart of our system. Never forget for one moment when you are in that jury room that Bernard Goldenberg, like every citizen in this country, is protected by the presumption of innocence, and it is the burden of the government to pierce that cloak of innocence with evid nce, fact, to prove guilt beyond a reasonable doubt.

Beyond a reasonable doubt is something which as intelligent people you know is something that you would rely upon when making decisions that are the most important decisions in your life. We are not talking now about money or property. We are talking about decisions in your life that would go to freedom elementary decisions, basic decisions, things more important than whether you would buy a house or buy a car or sell a house, but the most important decisions in your life; would you rely upon the evidence presented in this case as proving beyond a reasonable doubt that Mr. Goldenberg is guilty of what he has been accused of in the indictment. The government has the burden of proving that Bernard Goldenberg had income substantially as alleged in the indictment, that he willfully, intentionally and voluntarily intended to evade paying taxes on that income and filed a false 1968 tax return. The government must prove Bernard Golde Farg's intent, his state of mind You have heard some talk about, well, Mr. Goldenberg controlled

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the funds, controlled the money. Every dollar that a person controls is not income. There are stock brokers that have discretionary accounts that control their clients' money, but that's not income.

when you borrow money from a bank, you control that money, but that's not income. We are talking about income, not money, and the government has failed to prove beyond a reasonable doubt that Bernard Goldenberg received income. The government has flooded this courtroom with documents, one document after another, hundreds of them, piled them up. They say that's evidence of intent, that's evidence of income.

That reminds me of a story about a little boy that had two problems. He would always come home late from school and he would always lie. His father said to him, "Son, if you ever come home late from school again or lie again, you are going to be punished."

The little boy said, "Dad, I promise, I won't come home late from school again nor will I lie."

It didn't take more than a few days, the little boy comes home late from school. His father says, "Son, you came home late from school, and unless you have a good explanation,"

I am going to have to punish you."

The little boy says, "Dad, it wasn't my fault. I tried to come home on time. In fact, I cut through the woods so

"that I could get home quicker, and right in the middle of the woods this big bear got in front of me, and I tried to get around the bear, and I went to the left of the bear and I went to the right of the bear, but I just couldn't get away from that bear. Finally that bear trapped me and I picked up a stick and I beat that bear and I beat that bear until I killed it, and that, Ded, is why I am home late from school."

The father said, "Son, not only are you home late from school, but you have lied."

The little boy said, "Dad, I didn't lie. I can prove I killed that bear. Here is the stick."

Ladies and gentlemen of the jury, the government has shown you the stick, because without the testimony of the witnesses, those documents that the government says prove intent on the part of Bernard Goldenberg is nothing more than a stick. It is how you interpret those documents. What do they really say? Nothing that I say to you is evidence and nothing that Mr. Littlefield said to you is evidence. The only evidence is the testimony of the people who were on that witness stand under oath and what you may believe the documents say.

Goldenberg had income. They fluctuated, they have gone all over the place to show the income. One part of the trial, the beginning of the trial, and in his opening statement, the govern-

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ment tried to show or their theory was that Bernard Goldenberg had income because it was his share in the proceeds of the sale of Mastercraft stock. Being that it was his share of the proceeds, it was income. Then the government said, "But if that's not income, then if that money went to Superior Plans as something other than income, then when he took it out he didn't intend to repay it, so then it was income."

Ladies and gentlemen of the jury, the government has got to prove that it was income one way or another, and the fact that Bernard Goldenberg controlled that money is not proof that it was income. That is not proof that it was income. Let's look at the testimony of some of the witnesses.

Philip Leeds. He was a government witness who was called by the government. He is an attorney, a practicing attorney. He practiced in New York, he is now practicing I think in Arizona. What was his testimony? He testified that he was the attorney for First Standard. He also testified that he originally had control of the money received on the sale of Mastercraft stock and that thereafter he gave control to John Gluskin who was the attorney for Mastercraft. There was no testimony by Mr. Leeds that he was directed by Mr. Goldenberg to give control of the proceeds of that stock to Mr. Gluskin. There is something very interesting in his testimony. Mr. Leeds testified that it was his idea, his idea, to control the

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sale of Mastercraft stock, it was his idea to control the proceeds of that sale, not Mr. Goldenberg's idea. He testified that he had discretion as to the investment of the funds, not Mr. Goldenberg. I asked him whether Mr. Goldenberg put him up to this, and the government witness said no, he did not. You don't see Mr. Leeds on trial now, do you? Mr. Leeds testified that Mr. Goldenberg came to him with the idea of forming Superior Plans. I asked him, was it for the purpose of siphoning off money from Gluskin as a subterfuge to get his share of the profits? He said no. That was the government witness speaking. He said no.

Versation where Bernard Goldenberg was with John Gluskin and said this is a way for me to siphon off my share of the proceeds. He said no. I asked him whether he ever heard Goldenberg ask Gluskin for cash, cash. He said no. He said that Mr. Goldenberg wanted convertible debentures. What is a convertible debenture? It is a note. Superior Plans needed money. A convertible debenture is a note which can be converted into equity in the company. There is nothing sinister about convertible debentures, there is nothing sinister about notes. They are used in business. They are in evidence, 26 of them have been signed. All it shows is that John Gluskin went ahead and purchased notes, convertible notes, of Superior Plans.

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That's all it shows. But a very strange thing happened during Mr. Littlefield's summation. He showed you the empty minute book. He said, "See, even Goldenberg knew it was valueless. He didn't take any certificates, he didn't take any shares. It is a blank book."

But do you remember he also said Mr. Goldenberg only wanted 49 debentures because he didn't want to give anybody 51 percent control of the corporation. Which way are we going to have it? Was it a meaningless shell to Mr. Goldenberg, as Mr. Littlefield said, or was it something of value to Mr. Goldenberg, as Mr. Littlefield said, because he didn't want to give somebody 51 percent control. The government will have you running around in ever increasing circles until you are running in every direction at the same time. You can't run in every direction at the same time.

Mr. Leeds testified that Mr. Goldenberg was the sole stockholder. The corporate resolutions show that Mr. Goldenberg is the sole stockholder. The government says, "Well, no certificates were issued, so then he wasn't the stockholder.

On the other hand, he controlled the funds and he was the stockholder."

What are they trying to muddy up the waters for? For what reason? What position is the government taking? Was Goldenberg the stockholder or wasn't he?

The government again will have you running in every direction. Mr. Leeds is an attorney, and still is an attorney. He testified that he discussed these debentures with Mr. Gluskin, that he wrote a letter to Mr. Gluskin. The government will have you believe that Mr. Leeds was in some sort of conspiracy with Mr. Goldenberg. If that's so, then why is Mr. Goldenberg sitting there alone and why is Mr. Leeds practicing law? Mr. Leeds is their witness. I didn't call him. Mr. Goldenberg didn't call him. Mr. Leeds testified as to what Mr. Goldenberg's intent was with regard to that corporation. He told of certain businesses that the corporation wanted to go into. We all know that corporations can start off in one direction and because of one reason or another go into another direction. If you are wrong, does that mean you have to stay with a wrong position because you took it once, or can you change direction?

Mr. Leeds testified that it was a ban, a convertible loan. That's the only testimony we have, was the convertible loan, and that's the documentary evidence. The documentary evidence is there was a convertible loan to Superior Plans. He gave Mr. Gluskin a letter, and that letter is in evidence. I am not asking you to look at documentary evidence in the abstract. Look at the documentary evidence in light of what the people said about them, what Mr. Leeds said about them. Can you believe Mr. Leeds? The fact that Gluskin purchased

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convertible notes or convertible debentures is not proof that Gluskin paid money to Goldenberg as income any more than your borrowing money from a bank is.

Let's look at the testimony of Al Dayon. Al Dayon was chairman of the board of Mastercraft. He testified that Gluskin controlled the proceeds of the sale of Mastercraft stock. He also testified that the stock was really his. He also said that he was not present at any meetings between Goldenberg and Gluskin. Again, Mr. Dayon was a government witness. He was not called by Mr. Goldenberg. Mr. Dayon testified as to two things that Mr. Gluskin told him. but bear in mind that as to both these things that Gluskin told him, Mr. Goldenberg was not present when Gluskin told these things to Dayon. At one time Mr. Dayon testified that outside the presence of Mr. Goldenberg, Gluskin told him that Goldenberg was getting proceeds, money, from him as his share of the proceeds of the sale. However, if you recall, he testified that Gluskin told him later on that it was an investment he was making in Superior Plans for convertible debentures on which they would make a lot of money. What did the government prove beyond a reasonable doubt by the testimony of Mr. Dayon? What else is interesting concerning the testimony of Mr. Dayon? Dayon said he was looking for an accounting. But do you remember when I asked him did you ever confront Mr. Goldenberg

with what Mr. Gluskin told you, what did he say? No. So all we have are the statements that Mr. Dayon said Mr. Gluskin made to him outside of Mr. Goldenberg's presence, and those statements were conflicting. They certainly do not prove that Bernard Goldenberg killed the bear. Let's take Seymour Svirsky, another government witness.

He testified that Goldenberg in 1968 asked him about some brokers, whether he knew any brokers. He didn't know why, he didn't know the name of any stock involved. If you remember, I asked him whether he testified before the S.E.C. on January 23, 1969, and whether he was asked the following questions and gave the following answers:

"Q Did Mr. Goldenberg indicate why he wanted this introduction to any broker?

"A No, he never said a word."

So what can we gather from the testimony of Mr.

Svirsky? Why was he put up on the witness stand? To create an aura of dirt, to create a feeling in the jury, although he could testify to no facts, to create this image that Goldenberg was involved in some stock deal, although he never mentioned the name of the stock and he really couldn't testify as to anything. Yet the government put him in there. I think the most interesting testimony was the testimony of Leo Libowitz. He was the special agent of the Internal Revenue that was retired,

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and he interviewed Mr. Goldenberg. He testified that Goldenberg told him during interviews on October 11th and 12th of 1972 that Goldenberg borrowed the money from Superior Plans and loaned it to Kimis. That's interesting. How did the government know prior to asking Mr. Goldenberg about Arnold Kimis? Remember I asked him that? He testified that, "We learned it through Mr. Gluskin," that Mr. Gluskin met with Kimis. That's what Mr. Goldenberg testified to, that Gluskin was meeting with Kimis, that Gluskin knew what was going on. This question with this 98,000 shares of stock on this receipt, don't you think that if Mr. Goldenberg wanted to cut off anything on that receipt with regard to 98,000 shares, if he felt that was damaging to him, wouldn't he have cut it off when he made the photostat? Why would he have blocked it out and made the photostat? He knew sooner or later the originals would have to go to the government. That was just something that was written on there, had no bearing to the receipt.

When you examine the receipts, you will see that they are just little pieces of paper. There is no proof, if Goldenberg borrowed the money from Superior Plans, as Mr. Libowitz testified he said, what proof is there that Mr. Goldenberg didn't intend to repay that loan? Is there no proof that he didn't intend to repay the loan in 1968. If a man borrows money in 1968 and intends to repay it and then

in 1969, '70 or '71 changes his mind ... i says, "I am not going 2 to repay it, the devil .ith him," that doesn't mean that he 3 didn't intend to repay it when he borrowed it, if in fact he did borrow it. Then again, the only evidence you have that Mr. Goldenberg borrowed money from Superior Plans is the 7 testimony of Mr. Libowitz as to what Mr. Goldenberg told him. 8 That doesn't prove that Mr. Goldenberg killed the bear either. Mr. Goldenberg took the stand. As I told you, he didn't have 10 to. He was a convicted perjurer. He knows the penalty of 11 perjuring himself. Do you think, once having suffered the 12 penalty of perjuring himself he would get up on that witness 13 stand and intentionally lie again?

Mr. Libowitz's testimony confirmed what Mr. Goldenberg said regarding Gluskin's meetings with Kimis. The government has not proven that Mr. Goldenberg kept this cash or invested it for his own purposes. It is not only the evidence that you must look at, it is the lack of evidence that you have got to examine, the lack of evidence. The government new, as testified to by Mr. Libowitz, that money was going to Kimis. But the government offered no evidence to show why, what purpose. None whatsoever. They are asking you to make inferences, guess, conjecture, innuendo. Is that proof, is that evidence beyond a reasonable doubt? Do you know what happened to the money? Ask yourself that. What happened to that money? Did

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Kimis get it? If he did, who owed it to him? Did Goldenberg owe it to him? Or majoe Gluskin and Dayon owed it to him.

Maybe the money passed through Mr. Goldenberg on its way to Kimis. If so, is that income to Mr. Goldenberg?

The government did not prove that Mr. Goldenberg retained this money. The government did not prove with evidence that Mr. Goldenberg invested this money on his own behalf.

The government did not prove that Mr. Goldenberg loaned this money to someone on his own behalf. The evidence shows that Mr. Goldenberg acted on behalf of Superior Plans. Then we go back to the story of, well, look at the empty minute book, and then you hit the other side of that, he wouldn't give away 51 percent of that company.

Was Superior Plans a sham? If it was a sham, then why did Mr. Goldenberg want to retain 51 percent? You have heard testimony that Mr. Goldenberg supplied these receipts to the IRS. You also heard testimony that the IRS had the power to bring in Mr. Kimis, Mr. Metz, Billerest, Mr. Feinberg and get samples of their handwriting. They didn't do it. They didn't do that at all. How did the government prove beyond a reasonable doubt that this money did not go to the people Goldenberg said it went to? How did the government prove beyond a reasonable doubt that these receipts are forgeries?

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With the advent of the credit card, everybody seems to look down at cash, but I remember as a little boy my grandmother used to wait for the insurance man to come to the house, and she would give him a couple of dollars and he would initial a book, and that was so that when I was 21 there would be \$1,000 available for me. I also remember the landlord coming to the house or the superintendent coming to the house and being paid his rent in cash and giving a little receipt. But today, you mention cash, something has got to be wrong. It is legal tender. There is nothing wrong with cash. The government has failed to rebut any of the testimony of Mr. Goldenberg. It has failed to rebut the testimony of its own witness, Mr. Leeds, their witness. He told you what the depentures were, how the money was to be used, and that there was no payoff. Think of the awesome power of the United States of America, the power of this government. What did they find after six years of investigation? They found a bank account in Kansas City, Missouri, for \$5,000. Mr. Goldenberg explained what that was for. They found Irving Lazarus, the check casher, in Fort Lauderdale. That's what they found after six years of investigation. Where are Mr. Goldenberg's cars, his yachts, his homes, his jewels, his bank accounts, his stocks, his bonds? The burden of proof is on the government, not on Bernard Goldenberg. The government has failed to sustain that burden

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of proof. The government didn't even try to get handwriting exemplars. That is a lack of proof, a lack of evidence. Just the fact that they failed to try to get handwriting from Eriss and from Kimis and the other people involved. There has been some evidence in this case about flight and the fact that flight shows guilty intent.

Goldenberg didn't flee any prosecution. The aliases that the government said he used; he testified he used those names before, during and since the indictment. The letter went into evidence showing that Mr. Goldenberg was advised of his indictment by a letter sent to 48th Street. He no longer lived there then. So what is the relevancy of that letter? The fact that he moved from that address before he was indicted, what does that prove? Before he is accused of a crime he moves, and the government takes that evidence and puts it in. takes that envelope and puts it in. Why? To muddy the waters, to confuse you, to muddy your mind, to take your ye off the ball. That's why.

Remember on redirect examination I played prosecutor and I pointed to Mr. Goldenberg and I said, "Didn't you move a half hour after you heard of the indictment?"

If he did that, it would have been evidence of flight. He moved three to four months after he learned of the indictment. The government could have picked him up at any time. He wasn't

24 25 time did Mr. Goldenberg cash the checks. There could have been

is used. Check cashers are in business, and legitimate people

a hundred reasons, legitimate reasons, why a check casher

do use them, and the fact that the receipts show the full

amount without one percent deducted, that was because Mr.

Goldenberg was getting credit for the full amount. Kimis was

MR. LITTLEFIELD: Objection, your Honor. N testimony --

paying the one percent, not Goldenberg.

THE COURT: Sustained. I don't believe there was any testimony to that effect.

MR. BERGER: Look at Mr. Goldenberg's 1968 tax return.

All you heard about was that he had a loss for \$3,000. He showed \$57,000 in gross receipts. Look at it. It is right on there. He shows that he received \$57,000. The fact that you received money does not mean that it has income. The City of New York receives money. They are not making income. We all know about some major companies that had millions of dollars in sales, many millions of dollars in sales, and where did they go to get bailed out? Went to the federal government because they were losing money. The fact that you have gross revenue does not mean that you have income, and the government did not go ahead and show which expenses taken by Goldenberg on his '68 return were not legitimate. They didn't show you that at all.

fleeing. He was where he was for three or four more months.

He testified that he met with F.B.I. agents after that and spoke to them on the phone. The government is trying to muddy up the waters, to cast a shadow of guilt by showing you that Mr. Goldenberg used a few other names. That doesn't show that he intended to flee. That does not show guilty mind or conscience. If he would have fled after he knew of the indictment, that would have been a different story. The banking regulations that were read to you. You will find that there are three paragraphs to those banking regulations. The third paragraph is any unusual activity in an account should be reported to I.R.S.

That may not be applicable solely to cash. But what didn't the government prove? They didn't prove that Mr. Goldenberg knew of that regulation. The regulation standing by itself is not evidence of why Mr. Goldenberg was acting, unless the government gave you evidence that he knew of the regulation.

Then ask yourselves this. If that was his intent for going to Mr. Lazarus, then why did he cash \$130,790 worth of checks right at the bank? It just doesn't fit. The government can't have it both ways. Right here. He cashed \$130,000 worth of checks at the bank. He wasn't worried about the government knowing, Internal Revenue knowing, he didn't run to Lazarus for that purpose. The government didn't ask Mr. Lazarus when they had him on the stand, nor did I, for that matter, what

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They just said to you there was a lot of \$3,000. But they didn't say, 'He didn't have that expense, and we can prove it, he didn't have this expense, and we can prove it, he didn't have the other expense, and we can prove it." Lack of evidence, ladies and gentlemen of the jury lack of evidence. They tried to keep your attention away from the fact that \$57,000 in revenue was reported. Then they don't show you what expenses they want to disallow. No evidence as to that. You know what else is interesting? Mr. Goldenberg was the signatory on the Central State Bank and Chelsea Bank accounts. He made the checks payable to himself. His name was on every check he cashed. Does that look like he was trying to hide himself or hide the fact that he was taking or getting money? He didn't try to hide the fact that he was cashing the cnecks. The fact that he turned the checks into cash is not proof that he was not using the money for the corporate purposes.

The government has the burden of proving beyond a reasonable doubt that either Goldenberg kept the cash or used it for his own personal purpose. You heard no such evidence. You have just been given innuendo and documents and asked to make inferences. Is that proof beyond a reasonable doubt? Is that sufficient proof to overcome the presumption of innocence? The government has failed to prove beyond a reasonable doubt that the money was not invested on behalf of Superior Plans

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with Arnold Kimis, as Goldenberg testified. They are asking you to infer that it wasn't, to guess that it wasn't, to find because of innuendo that it wasn't. But where is the evidence that it wasn't? Where were the exemplars, the handwriting exemplars? The government has failed to prove beyond a reasonable doubt that Goldenberg borrowed the money from Gluskin or Superior Plans with an intent never to repay. Where is the evidence? Not guessing, not innuendo. Look for the evidence. You heard testimony from the stand. You have documents. Look for the evidence. We are looking for certain specific things that the government must prove beyond a reasonable doubt, and that doesn't mean by innuendo or by having you run in every direction at the same time. The government has failed to prove beyond a reasonable doubt that money was paid by Gluskin to Superior Plans 23 Goldenberg's share of the proceeds from the sale of the Mastercraft stock. They have failed to prove that. Leeds didn't testify that way, Dayon didn't know, he testified both ways, and would you want anyone to judge you on something somebody says you said when you weren't there to say, "Hey, wait a minute, I didn't say it"? Is that proof be ond a reasonable doubt? At least if Dayon had confronted Goldenberg, he was sitting up there, if he had confronted Goldenberg and said, "Gluskin said you said this or you did this," and Goldenberg said, "Yes, Gluskin is right, that's what happened," that would

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have been a different story. But Dayon did not confront Goldenberg. He never asked him. Dayon was a government witness. The government has failed to prove beyond a reasonable doubt that the money was income to Goldenberg and that Goldenberg knew it was income and intentionally failed to report that income on his '68 federal tax return. The government must not only prove that it was income, but must prove with evidence that Goldenberg knew it was income. Let's suppose that that money was going from Gluskin to Kimis through Goldenberg and Goldenberg had no right to keep it. That's not income to Goldenberg. What if there were a shady deal going on? The government hasn't proven there was, but she sure came out with enough innuendo that there was. If there was a shady deal, whose deal was it? Gluskin? Dayon? Dayon admitted his company got money. Dayon admitted that it was his stock that was being sold. Gluskin was his attorney. Gluskin controlled the money. We know that money did go to Kimis. Why is that Goldenberg's money? Assuming that it was a shady deal and Goldenberg was used to screen it, he might be guilty of some crime, but not income tax evasion.

The government has got to prove income tax evasion, not that Goldenberg is some kind of a crook. That doesn't mean anything. That isn't their burden of proof. They have got to prove that he had income, and they have had you running in

every direction, but they haven't proven that. They haven't proven that he controlled the money. They haven't proven that he didn't give that money to Kimis or Eriss. They have not sustained their burden of proof. This is a criminal case, and it is the government's burden to prove each element of the crimes charged in the indictment with evidence that convinces you beyond a reasonable doubt. Not conjecture, no innuendo, not inference, not possibility and guess. But proof, evidence, proof beyond a reasonable doubt. The government has the power, if such proof existed, to get it.

You heard them testify as to what they could do.

They could have issued subpoenas, they could have gotten the proof if it existed. They failed to sustain their burden of proof. There is a lack of evidence. That's just as important as what the evidence says; what the evidence does not say. The government has failed to sustain its burden. There is no burden on the defendant to prove he is innocent, none whatsoever. Even if you disbelieve everything that Goldenberg said from the witness stand and just cross it out of your mind and say, "He wasn't telling the truth," the evidence in the case fails to prove beyond a reasonable doubt that Goldenberg received income Look at the evidence. Empty minute books don't tell you anything. That's ambiguous. What do the witnesses say? Leeds. There's your main witness. An attorney called by

am finished Mr. L'ttlefield will get up and he will have a few more words to say to you. If he brings up any subject that I haven't covered, before you reach any conclusion I ask you to say to yourself, what would Mr. Berger have said to that? How would Mr. Berger have answered that? What would his answer have been? I am sure that after you have had an opportunity to evaluate all of the evidence, not the stick, but the evidence, and after you determine what lack of evidence this awesome government was unable to supply, I am sure that you will find Bernard Goldenberg not guilty.

Thank you.

MR. LITTLEFIELD: Let me go first to the tax return.

Mr. Berger says first the government hasn't disproven that

the deductions that Mr. Goldenberg took were legitimate from

the \$57,000. Let me just say in response to that, we don't

have to prove it and we didn't prove it and we didn't try to

prove it. We are giving him credit for every deduct'on he put

down on his schedule Cl, out of town travel, hotels, meals,

entertainment, gifts, supplies, consulting fees of \$38,000,

which he says he paid, periodicals and publications for a

total of \$47,000. Remember he said he had gross receipts of

\$57,000. We are giving him all that credit, \$47,000. Even

with that credit is when he comes out with a negative \$3,244.

Not only that, but we are giving him even more credit. As you can see by Mr. Buchbinder's figures, he is also giving him credit for additional business expenses of 21,000 and additional short term capital loss for \$9,000 more, so we give him \$30,000 more deductions than he took on his tax return. Notice we are giving him credit for all the ones he took in his tax return because we start out by accepting this negative figure as the point at which we then add the income that the government alleged. So we are giving him credit for that. We are not trying to disprove the deductions. We are giving him more, even, than he claimed. The \$57,000 in receipts, Mr. Berger mentioned that as if that was to cover the money that had come from Superior Plans, the part that Goldenberg, when he created this Government's Exhibit 46A, the disposition of the funds, where he says he got 46,000 to Bernard Goldenberg, \$429,000 to cash. The only problem with that is if you look at the Superior Plans tax return, it says that only \$12,000 was paid to Bernard Goldenberg. So that \$12,000 is the consulting fee. Presumably that would be included among the \$57,000. The rest of it, we don't know where it came from. He cannot claim that he reported all the Superior Plans money in that \$57,000. All he reported was \$12,000, according to the Superior Plans return. So the government is not required to disprove the deductions. In fact, we are giving him the benefit of the doubt on that.

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The next point he makes is that he says there are 100 legitimate reasons -- first, as far as directly cashed by Goldenberg, as I pointed out in my summation this morning, those checks were essentially the first ones at the very beginning. The first one was \$27,000, the next one was \$40,000, the next one was \$5,000 that he cashed, were all at the very beginning of the account. Once he started goin; to Lazarus, you may find that once he realized that they had to report this information to the government, that's why he stopped going to the bank and started going, as he did -- you will notice the Chelsea account, the second account, only \$12,000 was cashed, and that wasn't all at once, it was in smaller amounts. After this initial amount, not all of it, the bulk of it, there were initial checks and then more cashed along the way. Whenever there was a large amount after those initial checks, they went through the check casher. Mr. Berger said there are 100 legitimate reasons. He didn't name one. Why would you pay one percent more? Why would you do it, unless the point was to avoid the government knowing, as that regulation required the bank, if there were transactions larger than \$10,000, you have to report it to the bank, if they are in cash, or if there are transactions of \$2500 in hundred dollar bills, it has to be reported by the bank. Let's go to income and what it is.

Income is income coming in from any source whatsoever,

unless it is specifically excluded. That means if ou have
money coming in to you, you have control over it, you decide
what to do with it --

MR. BERGER: Objection, your Honor.

THE COURT: I don't think you should argue the law, but proceed.

MR. LITTLEFIELD: The Court will, however, instruct you, of course, on what income is. The point is, whether he gave the money to Kimis or not doesn't matter. The point is, did he have it and did he control it. That's the question.

You can get income that you give to a charity. That is still income to you, except for the charitable deduction.

You can have income you give to anybody. It is income to you as long as you control it, as long as --

MR. BERGER: Objection, your Honor.

THE COURT: I will permit this.

MR. LITTLEFIELD: So when er Kimis got all the money that Goldenberg said he did or whether he didn't doesn't matter. The point is did Goldenberg have it. The point is did he get it and did he decide what to do with it. Mr. Berger says the government must prove Goldenberg's state of mind, did he actually flee. He tells you the story about the bear, did the boy kill the bear. There is a little difference. The story about the bear, it is possible for you as jurors, for me

as a lawyer, for any of us to say, yes, he killed the bear; no, he didn't kill the bear by going, is the bear dead, is the bear alive, did anyone see him kill the bear, did they not see him kill the bear, does the stick he has have the bear's blood on it or some other blood. You can tell whether he killed the bear because that's a fact that is possible by determination by scientific analysis. But what went on inside someone's head, whether they intended to do something or not, science has no way of us knowing. You can't say, just turn on a machine and crank it out and say yes, he did, or no, he didn't. You have to look at all his actions. That's what I did this morning, reviewing all the details of how they set up Superior Plans the day before the first money was going to go in, the advertising agency business, but nothing ever happened there.

Mr. Berger said that corporations change their mind.

Yes, but usually, at least if they have their mind made up
initially, at least for the first day they still go along that
line. They don't change their mind even before they begin
to operate. Here the corporation wasn't filed until March
12th. They had already changed their mind by then. By March
8th they were already pulling the money out and giving it,
according to them, to Kimis. More about his state of mind.

The fact that the money was drawn out in cash, drawn out immediately as it went in, the whole business about the

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2 debentures. The debentures, we have seen they are worthless 3 because of the conversion. All he was going to get is stock. Mr. Berger says the government can't have 1, both ways. 5 Either Goldenberg had no interest in the corporation and didn't 6 care about it or because he wanted to make sure that he didn't 7 give away 50 percent of the stock he did care about it. Of 8 course he didn't want to give away 50 percent of the stock, 9 because if he had then Gluskin or somebody else could have come 10 back and controlled the bank accounts. The corporation did 11 exist, physically there was something there, but it was just 12 a conduit. If he had given away 51 percent, then anyone else 13 could have come in and said, "No, Bernard Goldenberg, he is 14 not going to be the sole signer any more. It is going to be 15 sombody else." Then Goldenberg would not have been able to 16 take the money out of Superior Plans by writing his checks. 17 Secondly, if someone else had controlled the corporation, 18 then someone else might have tried to get the money back from 19 Goldenberg because someone else would have the right to sue on 20 behalf of the corporation. Goldenberg didn't want that to 21 happen. He wanted to guarantee that he controlled the corpora-22 tion.

Secondly, as for those debentures, debentures were supposed to be \$10,000 apiece. Only 25 or 26 were ever issued.

That again shows -- I mean half of the money by anybody's

re as bold as a lion."

eventually went without even a debenture. So the debentures, because of that letter which meant they weren't transferrable for stock, because they were limited to less than 50 percent, and because they only covered half the money, you can see that those debentures are one of the facts that you analyze when you determine what's the state of mind of Goldenberg. The other area to determine his state of mind is his evasiveness. There is a saying which has to do with flight, but it applies to one's behavior when one is aware that one is accused of something like this. If I can remember it, it is something like, "The wicked flee when no man pursueth. The innocent

In other words, if you are guilty, you are always evading, you are shadowboxing, I will have the documents tomorrow, I will have them in a week, excuses after excuses. You hide, you cover. Then when you finally come up with something, half of it, you change your mind as to what your story is, that's the way a person who is guilty, who is aware of his guilt, behaves. That's the point there.

"The wicked flee when no man pursueth. The innocent are as bold as a lion." If you are innocent, you come right up front and tell them what happened. You don't try to hide. The state of mind of an individual, as the Court will explain to you, is not somethin; subject to mathematical certainty.

You have to look at all the circumstances of how this money went from the proceeds of Mastercraft stock promotion -- Mr. Berger says the government has changed its theory. The government never has changed its theory. This chart is as good now as it was in the beginning. The proceeds from the Mastercraft promotion, Gluskin special account, Superior Plans, Bernard L. Goldenberg. That's how he got the money out of the proceeds of the Mastercraft stock promotion. There is no doubt about it. He conceded the money came from the Gluskin account which had the proceeds in it, they then went to Superior Plans and then to Goldenberg. There is no change in theory. The testimony of Mr. Libowitz, I will just comment briefly on what Mr. Berger said about that.

You will recall that what Libowitz said Gluskin had told the agents when he had been interviewed was that Goldenberg had told him that Kin is had been introduced to Gluskin -- Gluskin had told him that Kimis had been introduced to Goldenberg in connection with the Mastercraft stock deal. That is what makes perfectly good sense when you look at this bit of the document, which, unfortunately, for Mr. Goldenberg he slipped up and the government got the whole thing at one point. Final payment in full, 90,800 shares. So we know that the money that was going out through Goldenberg to Kimis or whatever it was was related to the Mastercraft stock promotion. So we know

1 2 that what Libowitz said was right, namely that Kimis was intro-3 duced to Gluskin, according to Gluskin, in connection with 4 the stock deal and selling stock. Nothing to do with a hotel, 5 nothing to do with an investment. Final payment in full, 6 90,800 shares. I think I copied down what Mr. Berger said 7 about that. "Wouldn't he have cut it off if it were important 8 when he made the photostat?" The fact that it was written on 9 there had no bearing to the receipt, it had nothing to do with 10 the receipt. You just decide if this isn't Goldenberg's 11 handwriting. Here is another receipt, received from B.L. 12 Goldenberg. You just decide if this whole receipt doesn't 13 go together, if this final payment in full, 90,800 shares, isn't 14 related to this. Mr. Berger would have you believe that this 15 was something utterly unrelated. You look at that document 16 and then you look at the one that was submitted to the 17 government when the original was submitted. Here it is. 18 You can clearly see that it has been cut off. You can look 19 at these in the jury room. As for the handwriting, again, it 20 doesn't matter whether he gave the money t. Whis or not in 21 terms of it being income to him, is the government's position. 22 When he submitted these documents for a handwriting analysis, 23 all he submitted was the signature of Metz, of Bernard L. 24 Goldenberg and of William Eriss. He didn't submit - then he 25 asked the government to decide whether these slips were Kimis'

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or were Feinberg's or anybody else's on the basis of nothing to compare them with. You can't make a comparison of nothing, with nothing, of one thing with nothing. You have to -- sure, it might have been possible from Bernard L. Goldenberg's signature for the document examiner to determine whether this was Goldenberg's name. But as for initials, you just can't tell that from the full "W", William Eriss. If Goldenberg had wanted the government to be able to find out whether these were Kimis' or Feinberg's initials, Goldenberg would have submitted signatures of theirs, as he did with Bernard L. Goldenberg. The point is, again, the government does not have to prove what Golderberg did with the money after he got it in his control. As I say, he could have given it to a charity. Then Mr. Berger says once having known the penalty of perjury, would he intentionally lie again?

As I told you this morning, it is your job to decide whether his testimony was true or not. If you believe that it was not true, then you may find that these facts as this money went through, that that is just what was occurring, the money was coming to Goldenberg for him. He would -- he had control to do whatever he wanted. If he wants to give it to Kimis, that is one thing. It is his money coming to him from the Mastercraft stock promotion. Then he says what did the government find after six years of investigation, but a bank account

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1 2 in Kansas City, Missouri, and Irving Lazarus. Let's just look 3 at what has occurred. 'All of these records were gotten together, 4 and that was what happened in 1972 when the effort was made --5 when Goldenberg was confronted and given the chance to explain 6 this. What does he come up with, but, again, delaying tactics, 7 evasive tactics. So if we are worried about the period from 8 1972 to 1976, what happened, we know the first ten months was 9 taken up with waitin; for Goldenberg, we know that Goldenberg 10 was still handing documents to the Department of Justice in 11 1974. We know when he was indicted in 1975 and total of the 12 indictment, he didn't report as he was supposed to report and 13 he was not arrested until after an investigation by federal 14 authorities. There has been a stipulation, Mr. Berger has 15 stipulated to that, he wasn't arrested until the following 16 January, 1976, in California. Mr. Berger says the aliases, 17 well, they were used before, during and since. Let's just look 18 at the testimony. Question by Mr. Berger: 19 "Q After you learned of the indictment in this 20 case in April, 1975 -- after you learned of the indictment 21

in this case in April of 1975, you used the names Moran, Simmons and Cohen, is that correct?

"Only Cohen and Simmons were the same person." They are all the same person. They are all Bernard Goldenberg.

"Miss Simmons' maiden name is Cohen and her regular name is Simmons.

"Q Did you ever use those names before April of 1975?

"Only the name of Moran."

So Mr. Berger, when he tells you, well, he used the aliases before, during and since, at least two of them he used after he was known he was wanted and was told a warrant was going to be issued for his arrest.

The question of Superior Plans and what sort of -whether it had investments or not is answered by its own tax
return. Mr. Berger -- remember Mr. Goldenberg all along claimed
it was a loan, then he got on the stand and denied he ever
claimed it was a loan. Now they are claiming it was an investment. It is too late to claim it is an investment because the
tax return where it says, "Does the corporation have any investments?" it is blank.

THE COURT: That exhibit will be available to the jury.

MR. LITTLEFIELD: I think I showed it to them initially. The '68 return, like the '69 and '70 return, does not list any investment, so it is too late for them to change their position that it was an investment when, in fact -- here is the '69 return, balance sheet, blank, and it has here a line for other investments, attach schedule. Blank, nothing. The '70 return,

Blank again, no investments. So they can't change their tune

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now after they realize that a loan, if it is not really a loan.

and it is really just a way to get money out, and you don't

have any intention to repay, is income. I think it is agreed

that there was nothing put on the '68 tax return for Superior

Plans in that investment column either.

Then there were no returns filed after 1970. Again, the main point of this rebuttal is for you to understand how you go about deciding whether somebody does something willfully You have to look at all the facts around what they do because there is no machine that can look into somebody's brain that says yes or no. You look at the way the money went in, you look at the method to conceal, you look at the fact that it went out in cash, you look at the fact that Goldenberg told the IRS a whole series of false stories and then got on the stand and you may find told you a false story. That's how you

Finally, let me remind you again of Government's Exhibit 46A, which Goldenberg presented to the agents. This is the one that lists what happened to the money. It says cash disbursements, cash, 429. No mention of Kimis. To Bernard Goldenberg, \$46,457. That was unreported. By any event he knew, cash to Goldenberg, unreported. Remember what I said at the beginning, the government has to prove only a substantial

tell what's going on in somebody's mind, by their behavior.

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additional tax owing. If he had reported this \$46,000 additional, by his own admission, he would have had tax, you may find. The best way for me to close, I am not going to go into a long history of the jury system, your job is to apply your common sense to the facts. You know that. That's why you are here. You don't need a long lecture on what happened in the 12th century.

Our oath is to well and truly try the case according to the facts, the evidence and the law as the judge shall give it to you. Nothing else is required of you in this case than that, abiding by that oath. On the basis of the facts and the law as the Court shall give it to you, the government submits that Bernard Goldenberg is guilty of evading his income tax for the year 1968, which is count one, and count two, for filing a return which he knew to be false in some material respect, that is count two.

Thank you very much.

THE COURT: We finished earlier than we thought. I think we will take a ten-minute recess and I will charge you on the law. You had the summation of counsel, that's fresh in your mind. Maybe this is the time to give you the law.

(Recess)

THE COURT: My clerk informed me that you asked a question as to whether or not if I charged that you would have to start deliberating tonight. I think the answer to that -- I don't think, I know the answer to that is yes.

There isn't much sense in charging tonight and then letting you go over to tomorrow morning. Do you have a problem?

JUROR NO. 1: Well, the feeling was -- the general feelin; was that we would prefer to return in the morning and do it, and deliberate.

JUROR NO. 3: There is a difference.

want to do anything that anybody -- would put pressure on anybody one way or the other. It was my assumption that having heard the summation of counsel now, it is most logical to hear the charge of the Court, if it can be done at the same time. I would not require you to stay here late tonight. I wouldn't want you to feel any pressure. You could start deliberating, because it will be about -- you should be able to start deliberating about 4:30. As I say, I don't want to put any pressure on you. You are going to have the full time to do whatever you need to do. But we have done this before, we provide dinner, and if we do stay a little late tonight, we do provide limousines to take you home at the late hour, because I wouldn't ask you to go home by public means of transpor-

not reached a verdict tonight, we will send you home at a reasonable hour and let you come back in the morning to continue your deliberations. It was just my impression -- I see a lot of nodding yes. By a raise of hands, can we see how many would prefer to do that, to have me charge now and then deliberate for awhile tonight and see whether you go and reach a verdict or whether you have to go over until tomorrow.

JUROR NO. 1: That's fine.

THE COURT: That seems to be all right. As I say,
I don't want you to be rushed, and I am not going to rush
through my charge, but I think to get what's been said so far
and in conjunction with the law that I am going to charge you,
it might be best to get it now.

THE CLERK: The Court is about to charge the jury.

Anyone that wishes to leave may do so now. Once the charge is started, no one will be permitted to leave or enter the courtroom.

THE COURT: The reason we make the announcement that no one be permitted to enter or leave the courtroom while I am instructing you on the law is so that you shall not be distracted in any way by movement in or out of this courtroom from hearing what I have to say, because it is most important that you listen to these instructions and apply them to the facts as

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you find the facts to be in this case. That's what you are about to do now, and your final duty is to decide the fact issues in this case. I have been very happy to note that you have listened carefully and observed each witness as he testified, as I suggested that you do at the beginning of the trial. It has been evident that you have faithfully discharged this part of your duty. Now we have reached the point where all of the evidence is in the case, the closing arguments have been made by counsel, and shortly after I have completed my instructions on the applicable law, you will retire to deliberate upon your verdict. You are to perform your final duty in an attitude of complete fairness and impartiality. You are to appraise the evidence calmly and deliberately, and as was emphasized by me at the time of your selection as jurors, without fear, prejudice, bias or sympathy, with respect to either the government or the defendant as parties to this controversy.

The fact that this prosecution is brought in the name of the United States of America entitles it to no greater consideration than that accorded to the defendant in this case. By the same token, it is entitled to no less consideration.

All parties stand as equals before the bar of justice.

Your final role, as I have said, is to pass upon and decide the fact issues in this case. You, the members of the jury, are the sole and exclusive judges of the facts. You pass

upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such conflicts as there may be in the testimony and you draw whatever reasonable inferences that are to be drawn from the facts as you determine them to be.

My function at this point is to instruct you on the law. It is your duty to accept these instructions of the law and apply them to the facts as you determine them. The logical result of that application will be your verdict in this case.

With respect to any fact matter, it is your recollection and yours alone that governs. Nothing that counsel for either the government or the defense or nothing that I have said with respect to any matters in evidence, that is to any factual matter, or that I may say during the course of these instructions, is to be taken in substitution for your own independent recollection, which governs at all times.

Before we go to the precise charges involved in here,
I think a few preliminary instructions are in order. In
determining the facts, you should not be influenced by rulings
that the Court may have made during the trial. These rulings
dealt with matters of law and not questions of fact, and counsel
for both sides not only have the right but indeed the duty
to press whatever legal objections they felt were required.

The Court's rulings on the objections made by either attorney are not to be considered by you. As I told you at the outset. where I sustain an objection to a question, you must not speculate on what the witness would have said had he been permitted to answer, nor may you draw any inference from the wording of the question or that it was asked. Similarly, where any testimony was stricken, it 'not evidence and you are bound to disregard it. However, you must remember that in ruling on objections the Court was deciding questions of law and not questions of fact which are for you alone. I recognize that a judge can have some influence with a jury. If you think that you have gleaned any indication as to my opinion of this case either from any questions that I may have asked or from my expression or tone of voice, disregard it entirely. The Court has no opinion as to the veracity or the credibility of the witnesses or as to the guilt or innocence of this defendant. You are the judges of the facts and you are the sole judges of the guilt or innocence of this defendant. I am merely a judge of the law. Don't single out any one instruction of mine as stating the law alone, take them all into account after you have heard them all. You are to consider the evidence in this case and only the evidence in this case which consists of the sworn testimony of the witnesses, the exhibits which have been received in evidence, the facts which have been

stipulated and the presumptions which I will tell you about these instructions, such as the presumption of innocence.

But while you are to consider only the evidence if the case, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from facts which you find to have been proved such reasonable in ferences as seem justified to you in the light of your own experience. An inference is merely another word for a conclusion which reason or common sense leads you to draw from the fact that have been proved here. I am sure that you recall that as I told you earlier, an indictment is only a formal method of accusing a defendant of a crime charged and in itself is not evidence against a defendant, nor should any weight to given to the fact that an indictment has been returned.

Generally speaking, there are two types of evidence from which a jury may properly find the truth as to the fact of a case. One is direct evidence, such as the testimony of eyewitness, somebody who saw or heard something done or said. The other is circumstantial evidence, which is the proof of chain of circumstances pointing to the existence or nonexist of certain facts. The law makes generally no distinction between direct and circumstantial evidence, but simply require that the jury find the facts in accordance with all the evidence in the case, both direct and circumstantial. We have

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fairly common example that we use, most of the judges in this courthouse use, to explain the difference between direct and circumstantial evidence.

Assume that when you came into this courtroom this morning that it was a bright sunshiny day like it is out there now, and as you came in there were no clouds in the sky, you could see and observe that. You could see that it was a nice, good, spring day. Let's assume another set of circumstances. Assume that that's so and that we were down on the first floor of this courthouse in one of those rooms that's right off the front entrance, and assume that that courtroom had no windows in it. Assume that, as I say, you had come into this courtroom in the morning on a nice bright sunshiny day, but that after an hour we were in that courtroom and you saw some spectator walk into the back door and his clothes were damp and his hair was damp and his face had little specks or drops of water on them. Assume a few minutes later another spectator came in, he has a hat in his hand, and he also has damp clothing and the hat is a little wet. A few minutes later another spectator comes in, he has a raincoat on and an umbrella in his hand and the umbrella is dripping water and the raincoat is dripping water. Even though you couldn't see outside that courtroom, you could conclude on the basis of these circumstances that, in fact, the weather had changed and it was now raining out. That's

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circumstantial evidence. A change of circumstances leading to the existence or nonexistence of certain facts.

As I have said, the law requires only that you find the evidence in this case based upon both direct and circumstantial evidence.

So much for the early part of these instructions.

I previously indicated to you that the defendant had entered a plea of not guilty to the charges of the indictment and thus the burden is on the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. The law presumes a defendant to be innocent of crime, and thus a defendant although accused begins the trial with no evidence against him and the law permits nothing but legal evidence presented before you as jurors to be considered in support of any charge against a defendant. The presumption of innocence remains with the defendant throughout the trial and your deliberations, until such time, if ever, that the jury is satisfied of guilt beyond a reasonable doubt. Thus, the presumption of innocence lione is sufficient to acquit a defendant unless and until after careful and impartial consideration of all the evidence in the case you as jurors are unanimously convinced of the defendant's guilt

beyond a reasonable doubt. Later on I will define for you the term reasonable doubt.

The indictment in this case contains two counts or accusations. Each of these counts charges a separate offense or crime and each count must be considered separately. Each count of the indictment and the evidence pertaining to it should be considered separately. The fact that you may find the defendant guilty or not guilty of one of the counts charged should not necessarily control your verdict as to the other count. B fore I get to the specific counts of the indictment, I want to go over with you just briefly the witnesses who appeared here and the order in which they appeared and in some cases a brief description of their occupation. Counsel have adequately presented to you what necessary facts they believe have been established here and it is not my function to summarize the evidence in this case. I think it has been adequately done by counsel in their summations.

that nothing that I say is to be taken in place of your recollection of the facts which controls at all times.

Irvin; Shapiro was the first witness. He works in the controller's office in the City of New York, and he moon-lights as a tax preparer for Federal Tax Service, who I believe prepared the 1968 tax return for the defendant.

Very much there was a concession from the defendant that the 1968 tax return of the defendant was filed with the Internal Revenue Service on or about April 15, 1969, and also the Exhibits 4, 5 and 6, that of the Superior Plans tax returns for the year ended March 31, 1969, for the years '69 and '70, were filed with the Internal Revenue Service.

The next witness was Philip Leeds, the attorney. He was followed on the stand by Al Dayon, who at one time was involved with Mastercraft.

The next two witnesses went on and off the stand at different times, the first one was John Nagurney, a legal assistant in the legal department of the Chemical Bank, he was taken off the stand for a moment, for a short while, and Irving A. King, the assistant treasurer of the Central State Bank, was put on the stand. Mr. Nagurney was recalled. At the conclusion of his testimony, Mr. King was recalled.

The next witness was Lois C. Weed, the assistant cashier with the Chelsea National Bank. She was followed to the stand by Mr. Saymour Svirsky, who was a business broker. The next witness was Irving Lazarus, check casher. The next witness was Marsha Goldstein, who was president of Kuh, Loeb Company, but formerly was president of E.M.C. Securities, Inc.

The next witness was Mr. Sidney Buchbinder, technical

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Service. He was followed to the stand by Thomas A. Egan,
Internal Revenue Service Intelligence Division.

Following that there was a stipulation with respect to the scheduled arraignment of the defendant on these charges and the facts with respect to the defendant's nonappearance in New York, after which the government rested. Following that the defendant took the stand. The defendant rested. Then in rebuttal the government called Mr. Leon Libowitz who was formerly a special agent, Intelligence Division of the I.R.S., and then the two witnesses we had on this morning, Bill Hyatt of the Department of Justice and Philip White of the Alcohol, Tobacco and Firearms Bureau, the documents examiner expert.

Along the way there were various stipulations and conceded facts entered into between the attorneys for the parties.

As I said before, the indictment in this case contains two separate counts. Each count charges the defendant with committing a separate crime. Count one charges that the defendant unlawfully, willfully and knowingly attempted to evade federal income taxes due and owing for the year 1968. It charges, and you don't have to remember this section number, but it charges him with violating Section 7201 of Title 26 of the U.S. Code which in pertinent part reads as follows:

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"Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title, or the payment thereof, is guilty of a crime."

I will read to you now the first count of the indict-

"The grand jury charges on or about the 15th day of April, 1969, in the Southern District of New York, which for our purposes encompasses Manhattan, Bronx, Westchester and other counties, Bernard L. Goldenberg, the defendant, who during the calendar year 1968 was married, unlawfully, willfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of America for the calendar year 1968 by preparing and causing to be prepared, by signing and causing to be signed, and by filin; and causing to be filed with the Internal Revenue Service a false and fraudulent joint U.S. individual income tax return form 1040 on behalf of himself and his wife, wherein it was stated that their taxable income for the said calendar year was the sum of minus \$3,244, and that no income tax was due and owing thereon, whereas he then and there well knew their joint taxable income for the said calendar year was the approximate sum of \$505,931,89, upon which taxable income there was due and owing to the United States of America, an income tax of approximately \$349,517.24."

With respect to count one, there are three essential elements which the government must establish beyond a reasonable doubt before you may find the defendant guilty of that count.

The three elements are as follows:

First, that a substantial additional amount of federal income tax was due and owing from the defendant to the government for the calendar year 1968, over and above the amount of the tax declared or disclosed in his income tax return for that year.

Second, that the defendant made an attempt to evade or defeat that tax, and, third, that the defendant made the attempt knowingly and willfully.

I will elaborate on those elements as follows.

With respect to the first element, that is that there be a tax due and owing, the government must prove, and I said these elements must be proved beyond a reasonable doubt, that the defendant had taxable income which the defendant failed to report on his individual tax return and that had he reported such income there would have been a substantial tax due and owing to the United States. A few words about income and taxable income.

Gross income is defined by Section 61 of Title 26
of the United States Code as, "All income from whatever source
derived," and that's in quotes, "unless excluded by law." Income

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includes compensation for services, including fees, commissions and similar items, and gross income derived from business.

Taxable income may be proved by specific items as the government alleges here or by any other practical method available. Taxable incomes does not have to be income earned in the common everyday sense but may include, among other things -- various examples of this are proceeds from gambling, from embezzlement, from fraud, from kickbacks or payoffs or from a loan where at the time the loan was made there was no intention to repay it.

The government is not required to prove the unreported income to a mathematical certainty. It is sufficient if the proof establishes that a substantial part of a tax liability was evaded. What is a substantial part varies from case to case and depends on how the unreported income compares to the reported income and how large the tax would be on the additional income if it were reported.

Putting it another way, there can be no exact guidelines as to how much is a substantial amount of tax owing, and if you are convinced beyond a reasonable doubt that there was a deficiency in tax, you must decide whether the amount is to your minds substantial.

The second element, that is the attempt to evade. The attempt alleged in the indictment is the filing of false

return is knowingly filed. In order to file a false and fraudulent tax return, the defendant must know that he had income in the year in question which was taxable and which he was required by law to report and that he attempted to evade or defeat the tax on the amount or a substantial part of it by knowingly and purposely failing to state in the return

all of his income for the year in question.

The third element, willfulness. The third element of the crime of tax evasion which you must find in order to find the defendant guilty of that offense is that the defendant's fa'lure to report additional taxable income in the year in question, if you do so find, was willful. Even if you should find that the defendant understated income in the return, but that he did not do so willfully with specific attempt to evade taxes, you must acquit him.

The government must establish beyond a reasonable doubt that the defendant acted with a specific intent of defeating the truetaxes known by him to be due. Willful means that one does an act purposely and with the specific intent to disregard the law or to do that which the law forbids. It involves conscious wrongdoing or, as it has sometimes been stated, an evil state of mind, a criminal intent and purpose to violate the law in the context of this case, to cheat the govern-

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ment out of any part of the taxes known by the defendant to

be due to him. Actual knowledge that returns filed were false

and subsequent filing in spite of such knowledge would show

that the defendant was acting willfully. An act is not done

willfully if it was done by reason of inadvertence, carelessness,

negligence or an honest misunderstanding of what the law requires. Willfulness does not consist in errors of law,

mistakes of fact or bad judgment.

On the other hand, direct proof of willfulness is not required. Willfulness relates to the state of a man's mind and the state of the man's mind may be inferred from his words, his actions, his conduct, indeed it would be a rare case in, which it could be shown that a taxpayer publicly declared his willful intent to evade taxes. Accordingly, circumstantial evidence must frequently be relied upon. Willful intent may be inferred from the concealment of assets or sources of income, the handling of ones affairs to avoid making the records usual in transactions of the kind in which one engages, the destruction or falsification of a taxpayer's books and records, false explanations to revenue agents. sham commercial transactions intended to deceive, or any other conduct designed to mislead or conceal the true facts as to ones income. If tax evasion is the purpose of such conduct, willfulness may be found, even though the conduct may also have

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served some other purpose. With respect to count two of the indictment where it charges the defendant with unlawfully, willfully and knowingly and under penalty of perjury signing his joint income tax return for the year 1968 knowing that such return was not correct in every material respect, the pertinent provision of the Revenue Code 26 United States Section 7206 (1) is as follows. As I say, you don't have to remember the section numbers, just what they provide.

"Any person who willfully makes and subscribes any return, statement or other document which contains or is verified by a written declaration that it is made under the penalties of perjury and which he does not believe to be true and correct as to every material respect, is guilty of a crime."

Count two of the indictment reads as follows:

"The Grand Jury further charges on or about the 15th day of April, 1969, in the Southern District of New York,
Bernard L. Goldenberg, the defendant, unlawfully, willfully
and knowingly did make and cause to be made, and did subscribe
and cause to be subscribed, a joint U.S. individual income
tax return, form 1040, for the calendar year 1968 on behalf of
himself and his wife, which contained and was verified by a
written declaration that it was made under the penaltic of
perjury and was filed with the Internal Revenue Service, which
said income tax return he did not believe to be true and

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"correct as to every material matter in that on the schedule showing profit or loss for buisness or profession, Schedule C to said form 1040, his gross receipts were reported to be \$57,000, whereas he then and there well knew and believed his actual gross receipts were approximately \$597,000."

In order to find the defendant guilty of the offense charged in count two, that is of willfully subscribing to a false joint tax return, you must find that the government has established beyond a reasonable doubt each of the following four elements: one, that the defendant made and subscribed the joint tax return for the year 1968. In this case the defendant's name appears in handwriting on the 1968 return, and if you are satisfied beyond a reasonable doubt that he did, in fact, sign the return, then the first element is satisfied as to that count.

Two, that the joint tax return for the yearin question contained a written declaration that it was made under penalty of perjury. You have that exhibit which I think is Exhibit 1 before you and which is in evidence. If you are satisfied beyond a reasonable doubt that the return did contain that language, then the second elemen is satisfied.

not true and correct in every material matter, and, four, that in signing or subscribing to the tax return in question,

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the defendant acted willfully, knowing at the time that the return was not true and correct as to every material matter contained therein.

With respect to the first two elements, the signature and whether it contained the statement that it is made under penalties of perjury, there is no sense in adding anything to that. You have the return available for you. I think it was Exhibit 1.

The third element, falsity of a material matter. In order to find the defendant guilty of count two, you must find that as to the return in question the government has proven beyond a reasonable doubt that in some material respect the return was false. In this count the government alleges that the return was false and that it understated the amount of income received by the defendant. The government need not prove that the defendant understated his income by any specific amount, but only that the understatement was substantial. If you find that there was an understatment, the question of substantiality is an issue of fact which you must decide and for which there are no precise guidelines. It is an issue similar to that raised by the question in the tax evasion charge of substantial tax due and owing. That is what is substantial in any given case can only be decided by a consideration of the other circumstances peculiar to that case, including

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24 25 obviously the income reported. It is necessary for the omission, if a.y, of income to be substantial and a few insignificant omissions would not be enough to justify a finding of willful omission by the accused charged with making a false tax return. If you find for the year 1968 that there was a substantial understatement of income, then the tax return would have stated a false material matter within the meaning of the relevant statute.

With respect to the defense in this case, the testimony, there has been testimony with respect to the submission or the preparation of this return by a person other than the defendant. A taxpayer, of course, may delegate the responsibility for the preparation of his returns to a person such as an accountant whom he has reason to believe is competent to handle such matters. The mistakes of such a person are not attributable to the taxpayer. However, the taxpayer is required to give or to make available accurate information to his tax preparer with respect to his income or the taxable year in question. Moreover, the defendant cannot blame or shift responsibility to the person he retains if he deliberately withholds vital information from that person or directs that person to ignore information material to the preparation of the defendant's tax return. If the defendant provided his tax preparer with full information as to his income and then the

defendant then adopted, signed and filed the returns prepared for him without having reason to believe that they were not correct, then you would find the defendant not guilty. However, if you find beyond a reasonable doubt that the defendant willfully and knowingly did not provide full and complete information to the tax preparer, or that he knew the returns prepared by this tax preparer were not correct and substantially understated his tax liability, then you are not required to acquit the defendant simply because he did not personally prepare his tax returns.

There is a distinction between civil liability for the payment of taxes and criminal liability. This is a criminal case. The defendant is here charged with the commission of a crime. The question of the civil aspects of this is not to be considered by the jury in determining the issue in this case.

So much for my charge as to the specific offenses charged in the indictment.

Before I send you to your deliberations, there are a few more general comments that I am sure you will need to know about before you can consider this case.

I have mentioned a number of times reasonable doubt.

The question naturally arises, what is a reasonable doubt.

The words almost define themselves, that there is a doubt

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founded in reason and arising out of the evidence or the lack of evidence. It is a doubt which a reasonable person has after carefully considering all the evidence. A reasonable doubt is not a vague or a speculative or imaginary doubt. It is not caprice, whim or speculation. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy for a defendant. A reasonable doubt is a doubt which appeals to your reason, your common sense, your experience and your judgment. It is a doubt which would cause a reasonable man or woman like yourselves to hesitate to act in relation to your own important private affairs. Mere suspicion wll not justify conviction. Suspicion is not a substitute for evidence. Nor is it sufficient to convict if you find that the circumstances merely render an accused probably guilty. On the other hand, it is not required that the government must prove guilt beyond all possible doubt, but the proof must be of such convincing character that you would be willing to rely on and act on it in important affairs in your own life. In sum, a reasonable doubt exists whenever after a fair and impartial consideration of all the evidence before you, you can candidly and honestly state that you do not have an abiding conviction that the defendant is guilty of the charges.

During my explanation I used the words "knowledge and

intent" as an element of crime. An act or a failure to act is knowingly done if done voluntarily and intentionally, not because of mistake or other innocent reason. Knowledge and and intent exist in the mind. We all realize it is not possible to open up a man's head and see what's going on in his mind. Therefore, the only way that you have for arriving at a decision on these questions is for you to take into consideration all the facts and circumstances shown by the evidence and to determine from all such facts and circumstances whether requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge and intent may be inferred from all the surrounding circumstances.

most important functions would be to determine the credibility of witnesses. You as jurors are the sole judges of the credibility of the witness. You and you alone must determine what weight their testimony deserves. I gave you some guidelines at the outset of the case, and I am going to repeat and amplify on those instructions. Preliminarily you are to understand that you shouldn't be influenced by the greater number of witnesses called by either side. The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. Rather, you should consider all the facts and circumstances in evidence to determine where

the truth lies. In assessing credibility, you should carefully 2 scrutinize the testimony given, the circumstances under which 3 each witness has testified and every matter in evidence which 5 tends to indicate whether the witness is worthy of belief. 6 The degree of credibility to be given a witness should be 7 determined by his demeanor, his relationship to the controversy 8 and the parties, his bias or impartiality, the reasonableness of his statements, the strength or weakness of his recollection 10 viewed in the light of all other testimony and the attendant 11 circumstances in the case and the extent to which if at all 12 each witness is either supported or contradicted by other 13 evidence. How did the witness impress you? Did his version 14 appear straightforward and candid or did he try to hide some 15 of the facts? Is there a motive to testify falsely? In 16 passing upon the credibility of a witness, you may take into 17 account inconsistencies or contradictions as to material 18 matters in his own testimony or any conflict with that of 19 another witness, also any inconsistencies or omissions in any 20 prior testimony or any prior statement or material matters 21 as to which he may have testified upon the trial. Inconsistencie: 22 or discrepancies in the testimony of a witness or between the 23 testimony of different witnesses may or may not cause a jury to 24 discredit such testimony. Two or more persons witnessing an 25 incident or a transaction may see or hear it differently,

and innocent misrecollection, like failure of recollection. is not an uncommon experience. A witness may be inaccurate. contradictory or untruthful in some respects and yet be entirely credible in the essentials of his testimony. In weighing the effect of a discrepany, consider whether it relates to a matter of importance or an unimportant detail and whether the discrepancy results from innocent error or willful falsehood. If you find that any witness has testified falsely, you can do one of two things. You can either reject all of that witness! testimony on the grounds that it is all tainted by falsehood and that none of it is worthy of belief, or you can accept that part which you believe to be true and reject only that part which you believe to be tainted by falsehood. Should you find that all or any part of a particular witness' testimony was false, you may not, of course, infer that the opposite of that testimony is the truth unless there is other evidence in the case to that effect. Any testimony rejected by you as false is no longer in the case insofar as any finding that you may make is concerned. You will recall that I told you that an inference was a conclusion which reason or common sense leads you to draw from the facts which you find have been proved. Thus, a finding of fact may not be established merely by a negative inference arising from your disbelief and rejection of any testimony. In passing upon credibility,

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the ultimate question for you to decide is did the witness 2 tell the truth here on the stand before you. It is for you 3 to say whether the testimony at this trial is truthful in whole 5 or in part, in the light of his demeanor, his explanations and 6 all the evidence in the case. I told you at the outset that 7 the law does not require a defendant in a criminal case to testify or present any evidence in his own behalf. Where, as 9 here, a defendant does testify, it is your function as jurors 10 to assess his credibility in the same manner as you assess 11 the credibility of any other witness. You will recall I 12 instructed you that one factor to be considered in judging 13 credibility was any interest a witness may have in the outcome 14 of the trial. Obviously, a defendant has a personal interest 15 in the outcome of the case. Appraising his credibility, you 16 may take the fact of interest into consideration. It by no 17 means follows, however, that simply because a person has a 18 substantial interest in the result he is not capable of telling 19 a straightforward or truthful story. It is for you to decide 20 to what extent his interest, if at all, has affected his 21 testimony. Further, with respect to the testimony of the 22 defendant, there has been some testimony in here which if believed by you would indicate that when questioned by the Internal Revenue agents concerning his tax liabilities, the defendant voluntarily and intentionally made deliberate false

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2 statements of an exculpatory nature. If you find that the defendant when questioned by these Internal Revenue agents 3 concerning his tax liabilities voluntarily and intentionally 5 made a y deliberate false statement of an exculpatory nature. 6 you may consider such false or exculpatory statements as 7 circumstantial evidence from which consciousness of guilt or criminal intent may be inferred. Whether or not evidence 9 as to a defendant's explanation or statement points to a 10 consciousness of guilt and the significance if any to be 11 attached to any such evidence are matters for determination by 12 you. There has also been testimony to the effect that the 13 defendant used names other than his own during the period of 14 time after he was advised that he had been indicted and failed 15 to appear as scheduled for his arraignment. If you find that, 16 in fact, the defendant did use names other than his own, you 17 may consider that in connection with an inference of a conscious 18 ness of guilt on his part. If you find beyond a reasonable 19 doubt that he used a name other than his own in order to avoid 20 apprehension, that would be a fact from which you may but 21 need not infer a consciousness of guilt on his part. I think 22 as I stated it last is the correct way to have stated it. 23

There has been a stipulation in this case that the defendant did not appear at the scheduled time for his arraignment on these charges in New York and that he was subsequently

arrested some months later in California. If you find that his failure to appear prior to his arrest constituted intentional flight with respect to this case, then you may consider this. The flight of a defendant after he has discovered that he has been charged with a crime is a fact which, if proved, may tend to prove consciousness of guilt on the part of a defendant and may be considered and weighed by a jury in connection with all the other evidence. Whether or not evidence of flight shows a consciousness of guilt and the significance, if any, to be attached to such circumstances are matters for your determination. A flight of a defendant does not create a presumption of guilt, but is merely a factor to be considered by you together with all the other evidence in determining the guilt or innocence of the defendant. You will recall that during the course of his testimony at this trial the defendant admitted that he had been convicted of two counts of perjury. false swearing. The testimony of an admitted perjurer should be considered with caution and weighed with great care. You may, for example, decide that an admitted liar is unbelievable, or, conversely, you may accept his testimony. As always, the question is did the witness testify truthfully before you, and, as always, the question of credibility is for you and for you alone to decide. In your deliberations please do not consider or discuss the question of possible

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to return a verdict of guilty.

2 punishment. That is a matter that rests on my conscience and 3 my conscience alone because the judge and the judge alone 4 is the one who has the obligation of imposing sentence, when and if guilt is determined. If you do discuss it amongst yourselves, then you are encroaching upon my function and I ask 7 you not to do it. Your function is to consider the facts and to determine the facts and my function is to pass upon the law and in the event of conviction to impose sentence. If you find on all the evidence that the evidence respecting this defendant leaves a reasonable doubt as to his guilt, you should not hesitate for a moment to return a verdict of acquittal as to the defendant. However, if you find beyond a reasonable doubt that the law has been violated as charged, you should not hesitate because of sympathy or because of any other reason

The verdict must represent the considered judgment of each juror. Your verdict must be unanimous. It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to re-examine your own views and change your opinion if you are convinced it is

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erroneous. But do not surrender your honest conviction as to the weight and effect of evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning your verdict. You are not partisans. You are judges, judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the marshal, signed by the foreman or one or more members of the jury. No member of the jury should ever attempt to communicate with the Court by any means other than a signed writing and the Court will never communicate with my member of the jury on any subject touching on the merits of the case otherwise than in writing or orally here in open court. You will note by the oath about to be taken by the marshal that he, too, is forbidden, as all other persons, to communicate in any way with any member of the jury on any subject touching the merits of the case.

Bear in mind also that you are not to reveal to any person, not even to the Court, how you stand numerically or otherwise, on the question of the guilt or innocence of the defendant, until and unless you have reached a unanimous verdict.

I think it is appropriate to add that nothing said in

intimation as to what verdict I think you should find. What the verdict will be is the sole and exclusive duty and responsibility of the jury. In connection with your deliberations, you are entitled to have with you a copy of the indictment and any exhibits that you wish. If there is any need for any testimony to be reread to you, you specify specifically what parts you want reread, and we'will locate it for you and have that available to you.

of the charges I have made to you because those are matters of law or to make any additional requests in cases I have failed to instruct you with respect to any matters. I think rather than take it up here where we have to talk, it would be better if you retired to the jury room, this will only take a minute or two, and I will have you back in here. I suggest to the two alternate jurors when you go in there, if you have any of your clothes or clothing or any of your personal belongings, that you bring it out with you because when the jury is sworn only the twelve jurors will be allowed in.

(Jury not present)

THE COURT: Mr. Berger, any exceptions?

MR. BERGER: Your Honor, just renew the exceptions

I made prior to the instructions.

THE COURT: Which are, specifically -- can you be a little more specific? I thought we had covered everything.

Gross income, I know you excepted to the charge --

MR. BERGER: Right. Gross income and -- I think there were just two, your Honor. I think flight and gross income.

I don't recall if I had made any others prior. They were very minor.

THE COURT: I know. I just want to have a complete record.

MR. BERGER: I can't remember what they are, your Honor, except for the fact that those that I had made I renew because the instructions as read by your Honor are those that I had known you were going to read. There was nothing new, so I have no new objections.

THE COURT: Mr. Littlefield?

MR. LITTLEFIELD: Only, your Honor, that I would think that if someone decided not to repay a loan during the course of the calendar year, then it would be income to him. I think your Honor said that he would have had to at the moment he took the loan --

THE COURT: At the time he took the loan.

MR. LITTLEFILED: You said at the time he took the loan, if his intention was not to repay at that time, it would be income.

Mr. Berger.

The COURT: During the course of the calendar year,
I guess that's right, yes.

MR. LITTLEFIELD: The Court did not charge on false exculpatory documents, but on false exculpatory statements.

I have no problem with that. I don't think it is necessary to add the false documents.

THE COURT: Any further requests to charge, Mr. Berger?

MR. BERGER: No, your Honor.

MR. LITTLEFIELD: Your Honor, I don't feel from the government's point that it is necessary for you to single out and recharge at this point on that matter. If at any point they ask for the charge, that's --

THE COURT: Fine. Have you got a copy of the indictment handy?

MR. LITTLEFIEID: I am not sure. I believe I do.

THE COURT: Get it handy in a hurry. Snow that to

MR. BERGER: That's the indictment.

THE COURT: Do you have all the exhibits together?

MR. LITTLEFIELD: Yes. I also found the 1968 tax return, or Agent Digricoli, who we never introduced to the Court or jury, found it.

(Jury present)

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(Two alternate jurors excused)

THE COURT: The only further instruction I have to give to you, it is somewhat of a habit or custom for the person who occupies the first seat to be the foreperson of the jury. There is no reason that that has to be so. You can select your own foreperson, I hate to use that word but I guess I am required to these days. You can select your own leader. How you conduct your affairs is entirely up to you. I have some control over time, and so forth, but what goes on in the jury room is up to yourselves.

In reporting your verdict, you will report, "We, the members of the jury, unanimously find the defendant on count one," whatever it is. "We the jury unanimously find the defendant on count two," whatever it is.

Swear the marshal.

(A marshal was duly sworn)

THE CLERK: Will the jury panel please follow the marshal into the jury room.

(Jury commenced deliberations at 4:37 p.m.)

THE COURT: Gentlemen, stand by.

(Recess)

(5:05 p.m. - in the robing room)

THE COURT: We have a note, Court Exhibit 1. "May we please see Exhibit 1. All income tax forms." I don't know 2 whe

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whether that calls for the certificate of nonfiling, too.

MR. LITTLEFIELD: I would think it would, your Honor.

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MR. BERGER: I don't think it would. An income tax form is an income tax form. I don't think it would call for the nonfiling.

THE COURT: Send in what you have. Send in the tax forms, you can agree on those: There are three of them, aren't there?

MR. LITTLEFIELD: No, there are three Superior Plans and one of the defendant.

THE COURT: Exhibit 1.

MR. LITTLEFIELD: Perhaps when they come out --

THE COURT: I am not going to have them come out.

They want one copy of a debenture. Give them the debentures.

It says, "One copy of a debenture." You can agree on those things and then the clerk will send them in.

(Court Exhibit 1 was marked)

(5:25 p.m. - in open court - jury precent)

THE CLERK: Madam Forelady, has the jury agreed upon a verdict?

THE FORELADY: Yes.

THE CLERK: How do you find the defendant Bernard Goldenberg on sount one?

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two?

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THE FORELADY: Guilty.

THE CLERK: How do you find the defendant in count

THE FORELADY: Guilty.

THE CLERK: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded. You say you find the defendant Bernard Goldenberg guilty in count one and guilty in count two. So say you all.

THE COURT: Do you wish the jury polled?

MR. BERGER: No, your Honor.

MR. LITTLEFIELD: Your Honor, the government would request the presence of each juror moted on the record at this time.

THE COURT: I note that we have a full jury present, yes, sir.

dembers of the jury, it is not my function to comment on the jury's verdict. As I told you in my charge and throughout the trial, you were the judges of the facts. It was your function to determine the facts on the basis of the testimony and apply the law as I gave it to you to the facts. You have done so. I appreciate your cooperation in this case, you have been very diligent in being here on time. I can tell you that my day starts me thappily when I ask you to be here at 9:30 and that I start and walk in to the courtroom at the

stroke of 9:30. I haven't been able to do that too much because I had other matters scheduled, but you were here as requested at all times, you paid great attention to this case, you put up with some inconvenience. I want to tell you this, that I think one of the most important functions that a person can perform in civilian life is that of jury duty. I know you are anxious to get on your way, it is late in the afternoon, and if you will bear with me for a minute, it is the cornerstone of our whole system of justice, when there are disputes, the only reasonable, sensible way to resolve them is by having them passed upon by jurers in a courtroom in accordance with our legal procedures. I am sure that if you had a dispute, legal dispute, involving someone else, that you would hope trat you would get twelve jurors as conscientious as you yourselves have been in here to come in here and listen impartially and render a verdict based upon the testimony and the law. If you receive that kind of justice, no matter what the result would be, at least you would have had your day in court. You have provided that to both the government and the defendant in this case. While it has been a great inconvenience for you to do that, I suggest at every opportunity that you get called, if it is possible for you to come and serve, you do so. It is only by getting people like yourselves, you have been together the last four or five days, you know that you all come from different

walks of life, with different backgrounds, and that is what makes our jury system, people coming in from all different backgrounds and milieus. That's the way it works and works most effectively. It has been my pleasure to have been associated with you all. I thank you again for your cooperation with the Court and wish you all godspeed. I don't know what your obligations are. You are excused from jury service.

(Jury excused)

MR. LITTLEFIELD: May I be heard, your Honor, on the question of bail?

THE COURT: Suppose we set a date for sentence first.

Sentence will be set for May 25th at 9:30. I am

scheduled to be in courtroom 1505 during the months of May and

June, but we get changed around on our courtroom assignments,

so you will have to check and see where I am. What is the

application with respect to bail?

MR. LITTLEFIELD: Your Honor, bail is presently set at \$50,000 personal recognizance bond signed by the defendant and a woman associate from California. The government would respectfully request that under all the circumstances of his having been -- essentially refusing to report, the use of the false names, and I could tell the Court in detail what happened when we tried to look for him starting about in July of last year, where he kept moving from residence to residence,

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and it was only finally -- he would occasionally call in to the F.B.I. when they would leave messages for him at that post office box or at a telephone answering service, but he would never tell them where he was calling from and they could never locate him. It was only by investigations by the marshals in January that they were finally able to locate him and bring him in here. In view of that, he is now convicted, on appeal, I don't see any obvious problem on appeal, that bail be increased to \$50,000 cash or surety. We accommodated --Judge Frankel originally set the bail at two co-signers. government agreed at Mr. Berger's request that in order to have Mr. Goldenberg out of jail during the trial and in the weeks before the trial, we consented to reduce that to one. In fact, that's what happened. Now that he has been convicted, in view of his prior record of conviction, the matter of his having been a fugitive, your Honor, the government respectfully submits that bail be set in the amount of \$50,000 cash or surety. This is a man who has essentially shown no respect or regard for the requirements -- for the requirements under law. I think that he is someone we will not find again if he goes out of this courtroom today with the bail that he has now got.

THE COURT: Mr. Berger?

MR. BERGER: Your Honor, once the \$50,000 personal recognizance bond was signed by Mr. Moran, Mr. Goldenberg was

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available at every stage of the proceeding. If it were his intention to leave the jurisdiction and, to use the vernacular, skip, Mr. Goldenberg would have been long gone. Goldenberg has been convicted of a crime before, perjury, which held a five-year sentence. At that time after his trial he was out on bond. He appeared for sentencing, and he went to prison. The government had no problem finding him. I feel that the prior history of his having appeared, the fact that he has appeared during every stage of this proceeding. is indicative of the fact that he will be available on May 25, 1976, as he has been at every other time once bail was put up. I think that's short enough time for Mr. Goldenberg to put his affairs in order if he does not intend to appeal. I think he needs that much time. I feel that the fact that he did appear at a prior time and went to prison is probably more indicative than anything else that he will appear for sentencing this time. We never had a full hearing on the question of whether Mr. Goldenberg was hiding from the government after notice of the indictment. Witnesses, if your Honor wishes, could be brought in to testify as to where he lived, with whom he was living, to show that his address was known, to show that he had contact with F.B.I. agents and with other people in federal government. If he had intended just to vanish, he never would have even returned a phone call. I don't think

there is any danger of Mr. Goldenberg vanishing, particularly with regard to a crime which is a 1968 offense, not a crime of violence, something that happened seven years ago. It is the outgrowth of another trial which Mr. Goldenberg was acquitted of. He stood trial there, he appeared at every stage of that proceeding. On his perjury trial, he was present at every stage of that proceeding. I feel that there is no danger that -- Mr. Goldenberg, is not a danger to society. There has been nothing since 1968 where Mr. Goldenberg has been in trouble, outside of one problem in California, where he has a surety bond for \$5,000. If the Court feels that there should be a hearing on the evidence of Mr. Goldenberg's intention to flee or hide, I could see that. But I feel that unless the government were ab a to prove that there was flight on the part of Mr. Goldenberg -- I think when Mr. Goldenberg testified under oath, it was between three and four months after he learned from the indictment that he moved to the address where he was living at, I think that's more indicative that anything else. I had evidence here which I could not get put into evidence because they were copies of letters to Mr. Goldenberg from business people who knew where he lived, to show that he was working under his own name. There are business associates both in New York and California with whom he is presently doing business under his own name, who he was doing

business with under his own name prior to the indictment and since the indictment and subsequent to the indictment.

THE COURT: What kind of bond do you think he could put up?

MR. BERGER: I feel that the present bond of \$50,000, the P.R.B., which is co-signed by Miss Moran, who put her financial statement in, should be sufficient, as she does have considerable net worth. Unless Miss Moran comes in and says that she is afraid that Mr. Goldenberg is going to flee and she wants off the bond, I see no reason why that shouldn't continue.

MR. BERGER: It is fairly new, your Honor. It is a new statement. It was put together for this case so that Mr. Goldenberg could get out and try to prepare for trial. Miss Moran is a business associate of Mr. Goldenberg's. I know that Mr. Goldenberg right now is in the middle of negotiations with various companies, with the Yoohoo Company and other companies, with regard to products that Miss Moran is interested in and other people are interested in.

The May 25th date, if Mr. Goldenberg were able to complete his work between now and May 25th, these people would not be injured as badly in the event that Mr. Goldenberg is sentenced to a prison term as they would be injured if he were

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sent to prison now to await sentencing. They suffered a considerable amount because of the fact that they have relied upon him to do certain things, and for approximately three months he was unable to do those things. I feel that if this were a more recent case, or there were other factors involved, but we are going back to something that happened in 1968. I think your Honor from hearing the evidence knows that there were extenuating circumstances to this case. I think your Honor knows that perhaps Mr. Goldenberg did not get all of that money, that perhaps other people did. I think the government knows that, too.

Mr. Goldenberg, if he had that kind of money, would not worry about putting it up for a bond. He just doesn't have it. I don't think that the evidence on flight has been sufficient to warrant, in view of the fact of his appearances at this time, his surrendering for a prison sentence in the past, his standing trial on a 20-count indictment in the past, I don't feel the very minor evidence of flight that was shown in this case is sufficient to warrant a greater bond than is now up. I believe Miss Moran should be advised of the fact, perhaps, and let her make a choice whether she wants off the bond, because the bond after conviction is different than one prior to conviction.

THE COURT: Is she in California or here?

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MR. BERGER: She is in California.

MR. LITTLEFIELD: Who are we talking about, Miss

Moran?

MR. BERGER: I am sorry, Simmons.

MR. LITTLEFIELD: I am sorry, is that the same

person?

MR. BERGER: The same person.

MR. LITTLEFIELD: Moran and Simmons are the same

person?

MR. BERGER: No. Judith Simmons. I spoke to her last night at twelve o'clock and I asked her about that possibility, and she said no, she would stay on the bond. If necessary, I would have Miss Simmons come in and tell that to your Honor. I'd also like to show your Honor the business things that Mr. Goldenberg is involved in here in New York with responsible companies.

THE COURT: What are his bail limits?

MR. LITTLEFIELD: His bail limits, because he felt he had to go to California in connection with preparing his defense, the government agreed and Judge Frankel ordered that he be allowed to go to California.

MR. BERGER: Mr. Goldenberg will not leave the state of New York unless he has to go to California for that trial.

Is that correct, Mr. Goldenberg?

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THE DEFENDANT: That's correct, your Honor.

MR. BERGER: He would stay right here in New York, and he would report in every week or twice a week, if necessary, to probation to show that he is here. I just feel that under all the circumstances and considering Mr. Goldenberg's age, he is not about to want to live as a fugitive for the rest of his life. He knows that if he jumps bail and does not come in for sentencing, he will have to live as a fugitive the rest of his life. I don't believe that on this particular case, that the facts are such that it could be assumed that Mr. Goldenberg would want to take the position of living as a fugitive.

THE COURT: When can we get Miss Simmons in here? MR. BERGER: I could probably have Miss Simmons in in a couple of days. I just have to call her and I'd ask her to fly in. Mr. Goldenberg, of course, you know, your Honor, was in prison here for 70 days and was a model prisoner. I think we knew the way this case was going, your Honor. I told that to Mr. Goldenberg. If Mr. Goldenberg had any idea of fleeting, he would have been fleeing prior to the decision, the verdict, because I was quite frank with Mr. Goldenberg on how I felt the outcome of this case would be.

MR. LITTLEFIELD: Except that he had been acquitted once before. In any event, Judge Frankel ordered two people to

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sign the bond and during the entire time Mr. Goldenberg was in jail, Mr. Goldenberg, the businessman who was involved with all the people in New York, he could not get anyone to co-sign the bond, even. That just suggests the standing he is in in the community in which he travels, your Honor.

THE DEFENDANT: If it please your Honor, it is a very difficult thing to ask a man with his life savings to put up \$50,000 and go home every night who has a wife and children and wonder that maybe, even if it was your own brother, that you might just for some reason say that you have violated something, to ask him to put up \$50,000. Only Miss Simmons did that based upon having worked with me for quite a period of time in the past year, knowing the type of work that I still want to do with myself. But the best thing I think I can say in my own behalf, your Honor, is that with this six years of waiting for this to come about, this tax situation, I am glad it is over with, I want to put myself in order, and, quite frankly, I have no intentions, because I realize having been in jail what happens when some people have been sent back for jumping bail or whatever it is, your whole life would be gone. I don't have that much life to go.

THE COURT: Have you got anybody --

THE DEFENDANT: I am living at the Seville Hotel.

THE COURT: Have you got anybody to put up some cash?

THE COURT: Even I don't.

\$5,000 for me in California. Miss Simmons has flown here to see Mr. Berger. I could call her on the phone. I just got done calling her because she asked me to please call her and tell her when the jury was going to go out. I am sure she will tell you that it is perfectly okay with her because --

THE COURT: We need her here to re-sign a bond anyway. She has to be here.

MR. BERGER: She could come in.

THE DEFENDANT: Your Monor, I realize I could get five years, or whatever. Certainly there is no place that a man with my background could earn a living without dealing with people who are well known, I can't hide any place. I really had it. To the extent I have to get this over with and sentenced and start a new life, you know, after I serve my time, or whatever. I am not about to go -- I have been in New York now three weeks. I couldn't take the chance that I was going to win this case if I had any intentions of trying to run away. I wasn't slightly under the apprehension that with all the government documents which I was made aware of that I would be so sure that I would win this case. I'd have to be pretty stupid, which I think even you don't think I am that stupid.

THE DEFENDANT: I would like you to instruct me, it is not for me to tell you what to do, you can hit me with any book you want. There is only one thing, when the time comes when I want to run away, I go right back to Metropolitan Correction Center and turn in my badge. That's what it boils down to, your Honor. That's just what it boils down to.

For the 70 days that I was in jail, I had no opportunity to earn any money. My living is dependent upon my ability to talk to people and be out in the work that I do.

MR. LITTLEFIELD: I might add I think the community needs to be protected against that. That's without any joking. That's in all sincerity.

MR. BERGER: There has been no evidence that Mr. Goldenberg defrauded anybody out of any money. As a matter of fact, I really object to that statement of Mr. Littlefield, and I have objected to few statements by Mr. Littlefield during the trial.

THE COURT: Why don't we get Miss Simmons in here Wednesday morning. Everybody be here Wednesday morning at 9:30.

MR. LITTLEFIELD: The only problem with Miss Simmons, there is some doubt as to the government's ability to collect anything from Miss Simmons.

THE COURT: 9:30 Wednesday morning. Until that time

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he will be	e continued.	Then I suggest that you call Mr.
Berger ton	norrow before	noon and tell him where you are. In
you heard	from him, Mr.	Berger
	MR. BERGER:	Mr. Goldenberg should call you?

THE COURT: Yes. If you haven't heard from him,
Mr. Berger, tell Mr. Littlefield immediately.
9:30 Wednesday.

(Court adjourned) .

1	rdsjb
2	UNITED STATES DISTRICT COURT
3	SOUTHERN DISTRICT OF NEW YORK
4	x
5	UNITED STATES OF AMERICA, :
6	Plaintiff, :
7	V. : 75 Cr. 385
8	BERNARD L. GOLDENBERG, :
9	Defendant. :
10	X
11	
12	June 14, 1976
13	4:30 p.m. BEFORE:
14	BEFORE.
15	HON. LEE P. GAGLIARDI,
16	District Judge.
17	
18	APPEARANCES:
19	ROBERT B. FISKE, JR., ESQ. United States Attorney for the
20	Southern District of New York, BY: BANCROFT LITTLEFIELD, JR., ESQ.,
21	Assistant U.S. Attorney
22	MARTIN BERGER, ESQ. Attorney for defendant
23	
24	000

THE CLERK: United States of America versus
Berrard Goldenberg. Is the government ready?

MR. LITTLEFIELD: Government is ready.

MR. BERGER: Defendant is ready, your Honor.

THE COURT: Mr. Berger, any legal reason why sentence should not be imposed at this time?

MR. BERGER: No, your Honor.

THE COURT: Mr. Goldenberg, any legal reason why sentence should not be imposed at this time?

THE DEFENDANT: No, sir.

THE COURT: Do you have any information to present on behalf of your client or information in mitigation of punishment?

MR. BERGER: Yes. Mr. Goldenberg has had the opportunity now of giving Mr. Rogart, the probation officer, all of the information that I believe was requested of Mr. Goldenberg and I think that Mr. Goldenberg has now made full and complete disclosure to the Probation Department.

With regard to a letter addressed by Mr. Littlefield on June 10, 1976, to your Honor, I would like to
refer to that letter. Mr. Goldenberg advised me that
for the years 1971 and 1972 he did in fact file his tax.
For the year 1973 he did file for an extention but because
of marital difficulties and the fact that the government

was then at that time going over his records and he was involved in a 1968 tax audit, he did not file. For the year 1974 he did in fact file. For the year 1975 he did in fact seek an extension due to the fact that he was in prison for approximately 60 days awaiting the trial of this case, that his extension has not yet expired and that he intends to file prior to the expiration date, which will probably be tomorrow. If not, then he will be filing and filing late. But he does intend to file.

I believe that covers it, your Honor, except for, again, repeating my plea for leniency in this case due to the fact that it's such an old case, going back to 1968. I believe that some of the letters that have been received by the Probation Department. if they have been referred to in the probation report, will show that Mr. Goldenberg has in fact received very fine references from people like Joseph Davis of Cruz-Air Home; RichardZief, attorney in New York, who has written many books; the Walter Reade organization, who have theatres and publishing firms in New York and California; Mr. Solomon Siegel, who is a pioneer in television in the United States and England; from Jim Carroll who is head of a major company in California; also from Judith Simmons, president of Muntz Home Theatre television. These are people for whom Mr.

Goldenberg is employed as a consultant and with whom he has contracts and executory agreements.

I believe that that would cover it, your Honor.

THE COURT: I'm sure you haven't had the benefit of this memorandum that I received from Mr. Rogart, which is dated June 14th. It's three and a half pages and I want to inform you, because you may wish to respond, but it's all contained in this one paragraph which says, "In essence the more deeply we attempt to probe into this defendant's background and current situation, the more evasive he has become. We frankly view Goldenberg's purported attempts to be completely candid and open with this department as utter failures. None of the attached statements submitted by the defendant are illuminating to any significant degree and we remain convinced that Goldenberg retains a posture of non-compliance with the court's most recent directives."

I thought I ought to call that to your attention in view of what you have indicated to me.

MR. BERGER: I have seen the last memorandum given by Mr. Goldenberg to the Probation Department. It answered every question that was asked of Mr. Goldenberg. I believe that the business that Mr. Goldenberg is in is of such a nature that many people, including attorneys

and others, may have difficulty in comprehending exactly what type of serving renders. Mergers and acquisitions and financial consulting is not something which most of us deal with every day. The merger of a public company and a private company with spinoffs and various other ramifications, based upon financial statements and everything else, sometimes leaves me at a loss. And I have dealt with it for many years.

THE COURT: I just thought I would call that to your attention. I'm not critical of you in any way what-soever but I'm just trying to indicate what the Probation Department has reported to me with respect to compliance with the directions that I gave.

MR. BERGER: Does your Honor have the statement given to Mr. Rogart on June 7, 1976, annexed to the report?

THE COURT: Yes. I must confess that I agree

100 per cent with what Mr. Rogart said in that paragraph
that I read to you, in light of that.

MR. BERGER: May it please the court, may Mr. Goldenberg address the court?

THE COURT: Yes. I was going to ask him whether he has anything to say on his own behalf or whether he wished to present any information in mitigation of punishment.

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THE DEFENDANT: Yes, your Honor. I went down almost the next day, I believe it was the next day when I left here, because I called Mr. Rogart at 4:30 when I left here. He gave me all the list of questions and I wrote them down and he asked me how I knew Mr. Venino, whereby I answered that I gave, if you have it in front of you, where I don't believe I could be more exact than that.

He asked me if I filed or didn't file my income tax statements based upon all the information available I answered it to the best of my ability. He asked me what acquisitions and margers meant. I said don't you know? He said no, I have no idea what acquisitions and mergers mean.

I said I don't believe that. You seem to be a very intelligent man. He said I don't know anything about acquisitions and mergers and please write me what that means.

Every item i answered I can't possibly, for my own benefit and I'm not trying to really be smart, I would like to know if I is being put on the spot like this, just one example where I failed to be not precise as to what I asked. If I left something out that's something else.

But to my knowledge I answered every question

given me. No man can do any more. I don't ask for any more time. I actually did what was finally asked by the government and mostly for you, because I didn't want to give the impression that I am trying to be evasive.

It's very hard when you are picked up January
8th and zoomed to the county jail and put in jail with
600 black people, white people, and all kind and you don't
eat for three days, can't make a telephone call, zoomed
to New York City to Metropolitan Correctional Center and
I'm supposed to come up with things that sometimes it
takes somebody else in the same position to find out that
it's not as easy as it seems.

Again, I even went down to my dentist because, again, it would look like maybe I had nothing really wrong with me. He took X-rays and my mouth, and I believe he is a professor at Columbia University. Then I went to the other doctor. I paid money I didn't have at that time just so I would get and pay the fee so they would examine me properly.

Again I just request one thing before being sentenced: Where did I fail to answer a question? If no one believes the answers, that's something else. But by far I did answer the questions, and I wouldn't like to think that if I am sentenced that I at least didn't have

the right, if I am allowed the right, to know where I failed in the probation situation, which I gather is a very serious thing and weighs heavily on how you are going to decide the situation.

THE COURT: It's a very serious thing to this extent: It's supposed to provide us with information upon which we can evaluate what we are going to do with respect to a sentence. That's the reason for it.

THE DEFENDANT: Your Honor, I even told about my wife and no man likes to tell about a woman he's been married to about ten years, about his private life. The first time it might have looked like I was evasive, but I was forced in putting that paragraph in.

As a matter of fact everybody in the building knows it, the superintendent, the doorman and unfortunately I do.

THE COURT: It's of really no great consequence to me in connection with the sentence I am going to impose. It's just a question of responding to those questions, responding to the matters with respect to what happened following the imposition of the sentence which Judge Frankel gave.

THE DEFENDANT: I told even how I am paying my bill --

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THE COURT: You said it couldn't be paid in one lump sum payment and you couldn't do it.

THE DEFENDANT: No. I was told about that when I went to the department in New York. I sat there for two hours while a woman and a new man who took over the department looked for it. Then I went to California.

About a year later the FBI contacted me and said the New York department wanted to talk to me.

ferring the case to California. When it came to California I spoke to the centleman in charge of California and we calked about it several times. When finally I said that I will give you what I think I can pay by the month, three days later I was picked up on this other matter for not appearing in New York for pleading guilty or not guilty or being arraigned, whatever the term is, on this income tax situation that I stood trial for and there was never any further opportunity -- I don't say what would have happened but this wasn't a case where I ran away and never spoke about the government and being imposed a \$4,000 fine.

THE COURT: That fine was imposed in July of 1971.

We are now almost to July of 1976, some five years later.

And you haven't paid a penny of it.

THE DEFENDANT: That's correct. But it wasn't

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I went down there on at least 20 or 30 occasions and then the head of the department said to come back again. And he who had been there eight or nine years left and it was turned over. I don't want to waste the court's time but I'm just telling you.

THE COURT: I am anxious to hear all I can hear.

THE DEFENDANT: But I did explain the facts. I can't come up with any other facts than what the facts are.

THE COURT: Anything further?

THE DEFENDANT: No, your Honor.

THE COURT: Mr. Littlefield.

MR. LITTLEFIELD: The government agrees entirely with Mr. Rogart's appraisal. If he wants four specific things where he was not specific, the IRS shows there is no record of his having filed an income tax return for '71 through '75. There is a record he filed a request in New York for extension in '71 and '73 but no returns. We do have records of his returns in 1969 and 1970 but none for '71, '72, '73, '74 and '75.

As for his explanation of the use of the aliases he testified differently about them when he testified on the stand than he did here. He admitted he had a checking

account in one of the names. Here he said he just used the name with the doorman and people in the building.

Next Mr. Rogart asked him where he has gotten his money to live recently and he says loans from friends. But he won't specify who the friends are.

Next, what his businesses are, and then he goes into this discussion at the bottom of the paper, the first page of this memorandum where he says these are business endeavors of high integrity but he can't tell you who they are because it has to remain secret. Those are four specifics which he has failed to give Mr. Rogart accurate or complete information on.

Your Honor, I would state, as I did previously, that he is treating the Probation Office the same way he treated the claims divisions in New York and in California, the same way he treated the United States Attorney's Office when he failed to show up as he said he would do for his arraignment, the same way he treated the Internal Revenue Service over two years when they were investigating his case in 1972 and 1973, and the same way he treated the jury, your Honor, when he got up there and testified as he did, and I specifically point to one of those slips of paper which got into the hands of the government, presumably that was not intended by Mr. Goldenberg, and

that's the one that said that certain of that money that had been paid was in return for 80,000 shares. If that isn't proof positive that these payoffs had to do with the stock manipulation, I don't know what it is.

This is relevant only, your Horor, this whole question of what he has done since the crime, is relevant only in response to Mr. Berger's argument that this is a reformed man. Clearly he isn't. He is just as unreliable, just as irresponsible as the facts show he was in 1968 and 1969 when hewas to file his return.

Finally, this sentence is, of course, for this crime and it's a massive tax evasion. \$540,000 passed into this man's hand out of the proceds of a stock fraud. We have no accurate, no positive explanation of what happened to this. It's a massive fraud. The government feels that white collar crime of this sort, the only way it can be prevented, is if people who engage in it understand if they are caught they are going to pay the penalty.

Thank you, your Honor.

THE COURT: Of course, one of the difficulties we have with these matters, and I don't belittle the fact of income tax evasion, but he is not being prosecuted for the underlying fraud. I know sometimes when you can't get him for the underlying fraud that tax evasion is the way

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to do it, and I guess that's the way it started with some of the crime figures back in the '30's and '40's. It's hard to say when you convict him for tax evasion you ought to be sentencing him for the securities fraud they couldn't convict him on. That's the difficulty that I have with part of this. I am not at all happy with Mr. Goldenberg's behavior in this matter, the way he has used and abused 's probation personnel and their function. It's incredible.

I can't believe he would take the risk that he has thaving to come before a judge with this kind of a report, unless there is, as I told him before in my own clear words, the only reason for evasion is to hide something that's there and the circumstantial evidence, as we charge the jury, comes from inferring things on the basis of proven facts. And the inference to be drawn, which I think is the only reasonable inference --

THE DEFENDANT: May it please the court, may I say one more thing in my behalf?

THE COURT: Certainly.

THE DEFENDANT: I just say one thing: That apparently I knew what it meant to file an extended return, having been right now in 1976 on trial for income tax evasion, and it wouldn't cost me any penalty or any trouble to have filed an extension for 1975 like I say I have in

the California office, which was mailed to New York to the Lexington Avenue Post Office. I can't see, which confuses me and it seems a little odd, that Mr. Littlefield said that there is no record of me filing for an extension of 1975, of which he notified and contacted the California office.

THE COURT: I don't think he said that.

MR. BERGER: He did say.

MR. LITTLEFIELD: I can't say whether there was an extension for '75 or not, your Honor.

THE COURT: That's what I understand. He said he hadn't filed it for '71, '72, '73 and '74.

MR. LITTLEFIELD: I said he filed extensions in '71 and '73 and no returns for any of the years.

THE DEFENDANT: Up to '75.

MR. LITTLEFIELD: no return for '75.

Rogart I filed for an extension because I was in jail for 70 days and all that.

THE COURT: Do you say that your 1971 has been extended up until now?

THE DEFENDANT: No, your Honor.

THE COURT: When did the extension that was granted run out?

THE DEFENDANT: I only asked for an extension, to the best of my knowledge, in '73 and I just filed for one in '75.

THE COURT: And you didn't file the '73 return?
THE DEFENDANT: No. I did not.

THE COURT: You got an extension of what, 30 days, 60 days?

THE DEFENDANT: I had no way of filing my '73 return because of very serious problems I had in New York.

THE COURT: I can't sentence you or take into consideration for not filing a return for '73. I don't know whether one was due or not. I can't take that into consideration, except to say that when the Probation Department requested information from you and they get the kind of information they got here, there is only one conclusion that you can arrive at, which a sensible person would arrive at.

THE DEFENDANT: I'm not earning any income. I
was working on acquisition and mergers a little bit because I have been back and forth to court here and certainly
can't be working very hard at it because of the fact that
I have been with Mr. Rogart, my attorney and here. So
there is nothing I am trying to hide. I am not working
for a company that I am not divulging. Also it's not a

company that I earned any money from.

As far as my aliases, everything that I said in court Mr. Rogart and everybody had. I was just trying to be a little more explicit on a few of times that these alias names were used. I certainly knew I went on record and that Mr. Littlefield, who has a copy of what was seized in ! lefcases in California, is the name Bernard Moran, which has \$100 on behalf of Dolores Moran, when the account was opened, was used. I didn't try to evade anything. I answered the questions even more detailed than wasn't brought out in court, as far as the several aliases, that I used on several occasions.

THE CCURT: I think we have all the information we need to do what we have to do. I don't think there is anything further to be said.

On Count 1 it is the judgment of this court that the defendant be committed to custody of the Attorney General or his duly authorized representative for a period of two years; sentence of all but six months is suspended. Defendant is placed on probation for a period of five years. In addition defendant is assessed a \$10,000 fine plus the cost of prosecution.

And on Count 2 the defendant is committed to the custody of the Attorney General or his duly authorized

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representative for a period of six months, to be followed by a period of probation of five years, concurrently with the sentence imposed on Count 1. In addition he is fined the sum of \$5,000 on Count 2, together with the cost of prosecution.

That's the judgment of this court.

Mr. Goldenberg, you have ten days within which to file a notice of appeal. If you do not have funds to pay the filing fee, the clerk will be directed to file a notice of appeal for you without the payment of a fee. If you do not have funds to retain an attorney for the purposes of prosecuting an appeal, upon the filing of the necessary papers the court will appoint an attorney to represent you on appeal.

MR. LITTLEFIELD: May I inquire whether that is a committed fine?

THE COURT: That's a committed fine in both cases.

MR. LITTLEFIELD: The defendant is presently released on a \$50,000 personal recognizance bond. The government would urge that that bond be transferred to a cash and surety bond as we did at the end of the trial, your Honor. This defendant, again, has shown his irresponsibility and his unreliability. He has now been sentenced.

Id

I don't think there are any serious problems on appeal for the government and I think he should begin serving his sentence at this point unless he can take a substantial amount of bail.

serving a jail term if there is a possibility of appeal and the possibility an Appellate Court might overturn it, which is always possible. We never know. Nobody would feel sorrier than Mr. Goldenberg and myself due to the fact I forced him to spend sometime being incarcerated and it were found that he should not necessarily have spent that time. He has already served 60 or 70 days on account of not being able to make bail or having violated the provisions of his bail. That's a substantial portion of the period he would have to serve if he behaves himself.

What kind of cash or surety can you get?

MR. BERGER: My client actually has no money.

He has enough to take care of his hotel bill. I can assure the court that as far as I know he has had no money from the day of his arrest until today.

THE COURT: Do you have a passport?

THE DEFENDANT: No, your Honor. I have never left the country in my whole life.

THE COURT: Don't start now.

THE DEFENDANT: There is no entry and I don't have a passport now and I haven't had one for many years.

THE COURT: We will continue bail as presently set.

MR. BERGER: Thank you, your Honor.

THE COURT: On the other hand, if the notice of appeal is not filed I would expect immediate surrender.

MR. BERGER: Your Honor, in that regard I would ask if a notice of appeal not be filed within ten days, that Mr. Goldenberg be given 90 days within which to surrender himself. That the judgment be stayed so he can take care of his medical problem of his teeth and his head. He has an absess of some sort. He is a diabetic and requires surgery which he should have out of prison. I don't believe that the 90 day extension or stay is unreasonable under the circumstances.

THE COURT: Are you indicating that no appeal is contemplated?

MR. BERGER: It's very possible, your Honor.

THE COURT: Let me suggest this: 12 days from today if no notice of appeal has been filed I think you had better submit the necessary affidavits of the medical treatment that is going to be required or you might consider as an alternative, we have excellent medical

2	facilities at Springfield, Mi
3	taken care of by the governmen
4	MR. BERGER: I will
5	THE COURT: For cale
6	this on for the 26th.
7	MR. BERGER: Is it p
8	day in July?
9	THE COURT: Yes, it
10	surrender July 1st at 9:00.
11	the meantime you may make what
12	Otherwise no notice of appeal
13	him to surrender July 1st to t
14	New York by 9:00 and it will b
15	for that day, Mr. Littlefield.
16	MR. BERGER: That's
17	THE COURT: That's r
18	presently set.
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ssouri, where this might be nt. discuss that. endar purposes we will put possible to put it on the 1st is. We will put it on for Depending on what happens in tever application you desire. being filed I would expect the marshal's office here in e put on the court calendar if I do not file a notice? ight. Bail is continued as

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1. 10	JUDGMENT United States District Court to BERNARD L. GOLENBERG THE SOUTHERN DISTRICT OF NEW YORK
DEPENDENT	BERNARD L. GOLENBERG THE SOUTHERN DISTRICT OF NEW YORK
	JUDGMENT AND PROBATION/COMMITMENT ORDER
	In the pressure of the attorney for the government MONTH DAY YEAR the defendant appeared in person on this date
COUNSEL	JUNE 14, 1976 LI WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendent desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.
	X WITH COUNTEL Norton Berger (Name of counsel)
PLEA	there is a factual basis for the plea,
	There being a flading/verdict of \(\times \text{\text{\text{\$\subset\$X_j GUILTY.}}} \) Defendant is discharged
FINDING &	Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did attempt to evade and defeat a large part of the income tax due and owing by him and his wife to the United States of Americ. for the Calendar year 1968, by preparing and causing to be prepared, by singing with the Internal Revenue Service, a false and fraudulent joint U.S. Individual Income Tax Return, Form 1040. (Title 26, United States Code, Section 7201 and 7206 (1).)
SENTENCE OR PROBATION	The court miled whether defendant had anything to say why judgment should not be pronounced. Secause no sufficient cause to the country was shown, or appeared to the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is iterative committees to the court of the Attorney General or his authorized are seminative for imprisonment for a period of TWO (2) and on country one (1), and on condition that the defendant be confined a Jail Type or Treatment Institution for a period of SIX (6) MONTHS, the execution of the remainder of the sentence of imprisonment is hereby suspended and the defendant placed on probation for a period of FIVE (5) YEARS, subject to the standing order of this Court, pursuant to Section
DADER	TEARS, subject to the standing order of this Court, pursuant to Section 3651 of Title 18, U.S. Code, as amended. Defendant is fined \$10,000.00 and the cost of Prosecution. One count two (2) defendant is sentenced to SIX (6) MONTHS imprisonment, and placed on probation for a period of FIVE (5) TEARS to run concurrent. With semtence imposed on count one (1). On count two (2) defendant is fined \$5,000.00 and cost of prosecution. The fines on count one (1) as
CONDITIONS OF PROBATION	Defendant is continued on present bail until July 1, 1976 at 9:00 A.M., at which time he is to surrender to the U.S. Marshal for service of sentence. DOCKETED AS A JUDGMENT # 76 583
ADDITIONAL CONDITIONS OF PRODATION -	In addition to the special conditions of probation imposed above, it is bereby ordered that the percention of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.
COMMENTMENT RECOMMEN- DATION	JOSMANICO DES INVESTED DE LA COMPANICA DEL COMPA
SOURCE OF	NICED THE BICED
K TRUE COS	Deputy Clerk

COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, Plaintiff- Appelloe,

- against -

BERNARD L. GOLDENBERG, Defendant- Appellment. Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

NEW YORK

SS.:

I. Reuben A. Shearer

depose and say that deponent is not a party to the action, is over 18 years of age and resides at 211 West 144th Street. New York. New York 10030

That on the 26 the day of October 1914 at One St. adrews Plaza, Newe York, New York

deponent served the annexed app

approduce

upon

Robert B. Fiske Jr.

the Attorney in this action by delivering a true copy thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 36 the

Beth A. Khish

BETH A. HIRSH
ROTARY PUBLIC, State of New York
No. 41-4623156

Qualified in Queens County
Commission Expires March 30, 1978

Reuben Shearer